रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

सत्यमेव जयते

भारत का राजपत्र
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सं. 31] नई दिल्ली, जुलाई 27—अगस्त 2, 2014, शनिवार/श्रावण 5—श्रावण 11, 1936
No. 31] NEW DELHI, JULY 27—AUGUST 2, 2014, SATURDAY/SRAVANA 5—SRAVANA 11, 1936

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 22 जुलाई, 2014

का.आ. 2116.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, गृह मंत्रालय के निम्नलिखित कार्यालय में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप एतद्द्वारा अधिसूचित करती है:

49वीं वाहिनी, भारत तिब्बत सीमा पुलिस बल जिला-वेस्ट सियांग (अरूणाचल प्रदेश)

[सं. 12017/01/2012-हिन्दी]

अवधेश कुमार मिश्र, निदेशक (राजभाषा)

MINISTRY OF HOME AFFAIRS

New Delhi, the 22nd July, 2014

S.O. 2116.—In pursuance of sub- rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following office of the Ministry of Home Affairs, wherein the percentage of the staff having working knowledge of Hindi has gone above 80%:

49th Battalion ITBP Distt-West Siang (Arunachal Pradesh)

[No. 12017/1/2012-Hindi]

AVADHESH KUMAR MISHRA, Director (OL)

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

(राजभाषा यूनिट)

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2117.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम 4 अनुसरण में, मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा एवं साक्षरता विभाग) के अंतर्गत नवोदय विद्यालय समिति, नई दिल्ली के निम्नलिखित 14 जवाहर नवोदय विद्यालयों को, ऐसे कार्यालयों के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:

1. जवाहर नवोदय विद्यालय, गांव कौला, जिला अम्बाला-134003 हरियाणा

2. जवाहर नवोदय विद्यालय, खारा खेडी, फतेहाबाद-125048 हरियाणा
3. जवाहर नवोदय विद्यालय, फर्रूखनगर, गुड़गांव-122506 हरियाणा
4. जवाहर नवोदय विद्यालय, कलोई, झज्जर-124104 हरियाणा
5. जवाहर नवोदय विद्यालय, नौल्था, पानीपत-132145 हरियाणा
6. जवाहर नवोदय विद्यालय, खिडवाली, रोहतक-124312 हरियाणा
7. जवाहर नवोदय विद्यालय, मलिकपुर खादर, भूडकलां, यमुनानगर-135106 हरियाणा
8. जवाहर नवोदय विद्यालय, नान्दला, नसीराबाद, अजमेर-305601 राजस्थान
9. जवाहर नवोदय विद्यालय, बुडवा, बांसवाडा-प्रथम-327604, राजस्थान
10. जवाहर नवोदय विद्यालय, बांसवाडा-दृवितीय, राजस्थान
11. जवाहर नवोदय विद्यालय, ठाकरडा, डूंगरपुर, राजस्थान
12. जवाहर नवोदय विद्यालय, पल्लू, हनुमानगढ़, राजस्थान
13. जवाहर नवोदय विद्यालय, जसवंतपुरा, जालौर-307515 राजस्थान
14. जवाहर नवोदय विद्यालय, जटनंगला, करौली-322236 राजस्थान

[सं. 11011-3/2014-रा.भा.ए.]

आर. पी. सिसोदिया, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

(O.L. UNIT)

New Delhi, the 30th July, 2014

S.O. 2117.—In pursuance of sub- rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following 14 Jawahar Navodaya Vidyalayas of Navodaya Vidyalaya Samiti, New Delhi under the Ministry of Human Resource Development, (Department of School Education & Literacy) as offices, whose more than 80% members of the staff have acquired working knowledge of Hindi :

1. Jawahar Novodaya Vidyalaya, Village Kaulan, Ambala - 134005 Haryana
2. Jawahar Navodaya Vidyalaya, Khara Kheri, Fatehabad - 125048 Haryana
3. Jawahar Navodaya Vidyalaya, Farrukh Nagar, Gurgaon - 122506 Haryana
4. Jawahar Navodaya Vidyalaya, Kaloi, Jhajjar - 124104 Haryana
5. Jawahar Navodaya Vidyalaya, Naultha, Panipat-132145 Haryana
6. Jawahar Navodaya Vidyalaya, Khidwali, Rohtak - 124312 Haryana
7. Jawahar Navodaya Vidyalaya, Malikpur Khaddar, Bhudkalan, Yamunanagar- 135106 Haryana
8. Jawahar Navodaya Vidyalaya, Nandla, Nasirabad-Ajmer 305601 Rajasthan
9. Jawahar Navodaya Vidyalaya, Budwa, Banswara First -327604 Rajasthan
10. Jawahar Navodaya Vidyalaya, Banswara Second, Rajasthan
11. Jawahar Navodaya Vidyalaya, Thakarda, Dungarpur, Rajasthan
12. Jawahar Navodaya Vidyalaya, Pallu, Hanumangarh, Rajasthan
13. Jawahar Navodaya Vidyalaya, Jaswant Pura, Jalore - 307515 Rajasthan
14. Jawahar Navodaya Vidyalaya, Jatnagla, Karauli - 322236 Rajasthan

[No. 11011-3/2014-O.L.U]

R.P. SISODIA, Jt. Secy.

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 22 जुलाई, 2014

का.आ. 2118.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के साथ पठित, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स एसजीएस इंडिया प्राइवेट लिमिटेड, एमयू-33, मधुबन मार्केट काम्पलैक्स, मधुबन पारादीप-754142 (जिसे इसके पश्चात् अभिकरण के रूप में निर्दिष्ट किया गया है) को इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना संख्यांक का.आ. 3975 तारीख 20 दिसम्बर, 1965 से उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-1 अर्थात् लौह अयस्क का निम्नलिखित शर्तों के अधीन रहते हुए, उक्त, खनिजों और अयस्कों का पारादीप में, निर्यात से पूर्व निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात् :

(i) मैसर्स एसजीएस इंडिया प्राइवेट लिमिटेड, पारादीप, खनिज और अयस्क, समूह-I का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण करने के लिए उनके द्वारा अपनाई गई निरीक्षण की पद्धति की जांच करने के लिए इस निमित्त निर्यात निरीक्षण परिषद द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) मैसर्स एसजीएस इंडिया प्राइवेट लिमिटेड, पारादीप, इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण) द्वारा समय-समय पर लिखित में दिए गए निदेशों से आबद्ध होंगे ।

[फा. सं. 4/1/2014-निर्यात निरीक्षण]

ए. के. त्रिपाठी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 22nd July, 2014

S.O. 2118.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. SGS India Pvt. Ltd., MU-33, Madhuban Market Complex, Madhuban Paradip-754142, (hereinafter referred to as 'the agency') as an agency for a.period of three years from the date of publication of this notification, for the inspection of Minerals and Ores Group I, namely, Iron ore as specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce number S.O. 3975, dated the 20th December 1965, prior to export of the said Minerals and Ores at Paradip, subject to the following conditions, namely :—

(i) that M/s. SGS India Pvt. Ltd., Paradip, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965 and;

(ii) that M/s. SGS India Pvt. Ltd., Paradip, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council, may give in writing under these rules from time to time.

[F. No. 4/1/2014-Export Inspection]

A. K. TRIPATHY, Jt. Secy.

कोयला मंत्रालय

नई दिल्ली, 31 जुलाई, 2014

का.आ. 2119.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में वर्णित परिक्षेत्र की भूमि में से कोयला अभिप्राप्त होने की संभावना है;

और उक्त अनुसूची में वर्णित भूमि के क्षेत्र में अंतर्विष्ट करने वाले ब्यौरे का रेखांक संख्यांक आरईवी/06/2014, तारीख 25 फरवरी, 2014 का निरीक्षण सेंट्रल कोलफील्ड्स लिमिटेड (भूमि और राजस्व विभाग), दरभंगा हाउस, रांची– 834029 (झारखंड) के कार्यालय में या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, कुजू क्षेत्र, जिला रामगढ़ (झारखण्ड) के कार्यालय में या उपायुक्त, जिला रामगढ़, झारखण्ड के कार्यालय में या महाप्रबंधक (गवेशणा प्रभाग), आरआई–III, केन्द्रीय खान योजना और डिजाइन संस्थान, गोंडवाना प्लेस, कांके रोड, रांची (झारखण्ड) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता–700001 के कार्यालय में किया जा सकता है।

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप–धारा (1) द्वारा प्रदत शक्तियों का प्रयोग करते हुए पूर्वोक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है।

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति –

(i) उक्त अधिनियम की धारा 4 की उप–धारा (3) के अधीन की गई कार्रवाई से हुई क्षति या संभवतः होने वाली किसी क्षति के लिए उक्त अधिनियम की धारा 6 की उप–धारा (1) के अधीन प्रतिकर का दावा कर सकेगा ; या

(ii) उक्त अधिनियम की धारा 13 की उप–धारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने की बाबत या उक्त अधिनियम की धारा 13 की उप–धारा (4) के अधीन खनन पट्टे प्रभावहीन होने के लिए प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों के संबंध में उपगत व्यय को उपदर्शित करने के लिए पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा ।

राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, कुजू क्षेत्र, जिला रामगढ़ (झारखण्ड) या महाप्रबंधक, सेंट्रल कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, दरभंगा हाउस, रांची– 834029 (झारखण्ड) के कार्यालय को भेजेंगे।

अनुसूची

दुनी गवेषणा ब्लॉक

जिला रामगढ़, झारखण्ड

(रेखांक संख्यांक आरईवी/06/2014,

तारीख 25 फरवरी, 2014)

सभी अधिकारः

क्र. सं.	ग्राम का नाम	थाना	थाना संख्या	जिला	क्षेत्र एकड़ में	क्षेत्र हेक्टेयर में	टिप्पणियां
1.	दुनी	माण्डू	119	रामगढ़	447.07	181.00	भाग

कुलः 447.07 एकड़ (लगभग) या 181.00 हेक्टेयर (लगभग)

सीमा का वर्णनः

क–ख – रेखा बिन्दु 'क' से आरंभ होकर ग्राम दुनी के भाग से गुजरती हुई बिन्दु 'ख' पर मिलती है।

ख–ग – रेखा बिन्दु 'ख' चौथा नदी के साथ गुजरती हुई बिन्दु 'ग' पर मिलती है।

ग–घ – रेखा दुनी ग्राम के सीमा से गुजरती हुई बिन्दु 'घ' पर मिलती है।

घ–क – रेखा ग्राम दुनी के भाग से गुजरती हुई आरंभिक बिन्दु 'क' पर मिलती है।

[फा.सं. 43015/4/2014–पीआरआईडब्ल्यू–I]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL

New Delhi, the 31st July, 2014

S.O. 2119.—Whereas, it appears to the Central Government that coal is likely to be obtained from the land in the locality described in the Schedule annexed hereto;

And, whereas, the plan bearing number Rev/06/2014, dated the 25th February, 2014 containing details of the areas of land described in the said Schedule may be inspected at the office of the Central Coalfields Limited (Land and Revenue Department), Darbhanga House, Ranchi-834 029 (Jharkhand) or at the office of the General Manager, Central Coalfields Limited, Kuju Area, District-Ramgarh (Jharkhand), or at the office of the Deputy Commissioner, District Ramgarh, Jharkhand or at the office of the General Manager (Exploration Division), RI- III, Central Mine Planning and Design Institute, Gondwana Place, Kanke Road, Ranchi (Jharkhand) or at the office of the Coal Controller, 1, Council House Street, Kolkata- 700 001.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development), Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in land described in the aforesaid Schedule.

Any person interested in the land described in the above mentioned Schedule may —

(i) claim compensation under sub-section (1) of section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 of the said Act; or

(ii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting licence ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act, to the office of the General Manager, Central Coalfields Limited, Kuju Area, District Ramgarh (Jharkhand) or the General Manager, Central Coalfields Limited, Land and Revenue Department, Darbhanga House, Ranchi- 834029 (Jharkhand) within a period of ninety days from the date of publication of this notification.

SCHEDULE

Duni Exploration Block

District- Ramgarh, Jharkhand

(Plan bearing number Rev/06/2014, dated the 25th February, 2014)

All Rights:

Sl. No.	Name of Village	Thana	Thana number	District	Area in acres	Area in hectares	Remarks
1.	Duni	Mandu	119	Ramgarh	447.07	181.00	Part

Total: 447.07 acres(approximately) or 181.00 hectares (approximately)

Boundary Description:

A-B Line starts from point 'A' and passes through part of the village of Duni and meets at point 'B'.

B-C Line starts from 'B' and passes along with the river Choutha Nadi and meets at point 'C'.

C-D Line passes through village boundary of Duni and meets at point 'D'.

D-A Line passes through part village of Duni and meets at starting point 'A'.

[F. No. 43015/ 04/2014-PRIW-I]

DOMINIC DUNGDUNG, Under Secy.

नई दिल्ली, 28 जुलाई, 2014

का.आ. 2120.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में वर्णित भूमि में कोयला अभिप्राप्त होने की संभावना है;

और रेखांक संख्या एसईसीएल/बीएसपी/जीएम/पीएलजी/लैंड, तारीख 4 मार्च, 2014 का जिसमें उक्त अनुसूची में वर्णित भूमि क्षेत्र के ब्यौरे अन्तर्विष्ट है, का निरीक्षण महाप्रबंधक (गवेशण प्रभाग), सेंट्रल माइन प्लानिंग एण्ड डिजाइन इन्स्टीट्यूट लिमिटेड, गोंदवाना प्लेस, कांके रोड, रांची के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता – 700001 के कार्यालय में या जिला कलेक्टर, जिला भाहडोल, मध्य प्रदे ा के कार्यालय में किया जा सकता है ।

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके प चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप–धारा (1) द्वारा प्रदत्त भाक्तियों का प्रयोग करते हुए, पूर्वोक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वेक्षण करने के अपने आ ाय की सूचना देती है;

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति –

(i) उक्त अधिसूचना की धारा 4 की उप–धारा (3) के अधीन की गई किसी कार्रवाई से हुई या सम्भवतः होने वाली किसी क्षति के लिये उक्त अधिनियम की धारा 6 की उप–धारा (1) के अधीन प्रतिकर का दावा कर सकेगा; या

(ii) उक्त अधिनियम की धारा 13 की उप–धारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने की बाबत या उक्त अधिनियम की धारा 13 की उप–धारा (4) के अधीन खनन पट्टे प्रभावहीन होने के लिये प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा 13 की उप–धारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों की बाबत उपगत व्यय को उपदर्शित करने के लिये पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा।

राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर महाप्रबंधक (गवेशण प्रभाग), सेंट्रल माइन प्लानिंग एण्ड डिजाइन इन्स्टीट्यूट लिमिटेड, गोंदवाना प्लेस, कांके रोड, रांची–834031(झारखंड) के कार्यालय को भेजेगें ।

अनुसूची

भाहडोल ब्लॉक, सोहागपुर कोलफील्ड

जिला– ाहडोल, मध्य प्रदे ा

(रेखांक संख्या एसईसीएल/बीएसपी/जीएम/पीएलजी/लैंड, तारीख 4 मार्च, 2014)

क्र. सं.	मौजा/ग्राम	तहसील	पटवारी हल्का संख्या	बन्दोबस्त संख्या	जिला	क्षेत्र एकड़ में (लगभग)	क्षेत्र हेक्टर में (लगभग)	टिप्पणियां
1.	बेलहा	सोहागपुर	77	747	भाहडोल	74.13	30.00	भाग
2.	देओगवा	सेहागपुर	56	456	भाहडोल	79.07	32.00	भाग
3.	सोहागपुर	सोहागपुर	77	1016	भाहडोल	2125.15	860.00	भाग
4.	कोतमा	सोहागपुर	73	118	भाहडोल	308.89	125.00	भाग
5.	बलपुरवा	सोहागपुर	76	662	भाहडोल	303.95	123.00	भाग
6.	कोइलारी	सोहागपुर	79	160	भाहडोल	49.92	20.00	भाग

कुल क्षेत्र : 2940.61 एकड़(लगभग) या 1190.00 हेक्टर (लगभग)

सीमा वर्णनः

क–ख यह रेखा देओगवा ग्राम के बिन्दु 'क' से आरंभ होती है और सोहागपुर ग्राम से होकर गुजरती हुई बेलहा ग्राम के बिन्दु 'ख' पर मिलती है । रेखा 'क'–'ख' इस ब्लॉक की उत्तरी सीमा का भाग है।

ख–ग यह रेखा ग्राम बेलहा के बिन्दु 'ख' से आरंभ होती है और कोटमा ग्राम के बिन्दु 'ग' पर मिलती है। रेखा 'ख'–ग' इस ब्लॉक के उत्तरी सीमा का भाग है।

ग–घ यह रेखा ग्राम कोटमा के बिन्दु 'ग' से आरंभ होती है और ग्राम बलपुरवा के बिन्दु 'घ' पर मिलती है। रेखा 'ग'–'घ' इस ब्लॉक के पूर्वी सीमा का भाग है।

घ–ड. यह रेखा ग्राम बलपुरवा के बिन्दु 'घ' से आरंभ होती है और ग्राम सोहागपुर के दक्षिणी सीमा से होती हुई ग्राम कोइलारी के बिन्दु 'ड.' पर मिलती है। रेखा 'घ'–'ड.' इस ब्लॉक के दक्षिणी सीमा का भाग है।

ड.–च यह रेखा ग्राम कोइलारी के बिन्दु 'ड.' से आरंभ होती है और ग्राम सोहागपुर के पि चमी सीमा से होकर गुजरती हुई देओगवा ग्राम के बिन्दु 'च' पर मिलती है। रेखा 'ड.'–च' इस ब्लॉक की पि चमी सीमा का भाग है।

च–क यह रेखा ग्राम देओगवा के बिन्दु 'च' से आरंभ होती है और उसी ग्राम के बिन्दु 'क' पर जाकर मिलती है। रेखा 'च'–क' इस ब्लॉक की उत्तरी सीमा का भाग है।

[फा. सं. 43015 / 07 / 2014–पीआरआईडब्ल्यू–I]

दोमिनिक डुंगडुंग, अवर सचिव

New Delhi, the 28th July, 2014

S.O. 2120.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands described in the Schedule annexed hereto;

And, whereas, the plan bearing number SECL/BSP/GM/PLG/LAND, dated the 4th March,2014 containing the details of the area of land described in the said Schedule may be inspected at the office of the General Manager (Exploration Division), Central Mine Planning and Design Institute Limited, Gondwana Place, Kanke Road, Ranchi or at the office of the Coal Controller, 1, Council House Street, Kolkata - 700001 or at the Office of the District Collector, District of Shahdol, Madhya Pradesh.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in the land described in the aforesaid Schedule;

Any person interested in the land described in the above mentioned aforesaid Schedule may—

(i) claim compensation under sub-section(1) of section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub- section 3 of section 4 of the said Act; or

(ii) claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting licence ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the Office of the General Manager (Exploration Division), Central Mine Planning and Design Institute Limited, Gondwana Place, Kanke Road, Ranchi-834031 (Jharkhand) within a period of ninety days from the date of publication of this notification.

SCHEDULE

Shahdol Block Sohagpur Coalfield

District – Shahdol, Madhya Pradesh

(the plan bearing number SECL/BSP/GM/PLG/LAND, dated the 4th March,2014)

Sl. No.	Mouja/Village	Tahsil	Patwari halka number	Bandobast number	District	Area in acres (approxi-mately)	Area in hectares (approxi-mately)	Remarks
1.	Belha	Sohagpur	77	747	Shahdol	74.13	30.00	Part
2.	Deogawa	Sohagpur	56	456	Shahdol	79.07	32.00	Part
3.	Sohagpur	Sohagpur	77	1016	Shahdol	2125.15	860.00	Part
4.	Kotma	Sohagpur	73	118	Shahdol	308.89	125.00	Part
5.	Balpurba	Sohagpur	76	662	Shahdol	303.95	123.00	Part
6.	Koilari	Sohagpur	79	160	Shahdol	49.92	20.00	Part
				Total area:		2940.61 acres (approxi-mately)	1190.00 hectares (approxi-mately)	

Boundary description:

A-B Line starts from point 'A' in Deogawa village and meets at point 'B' in Belha village passing through the Sohagpur village. 'A-B' line forms the part of northern boundary of the block.

B-C The line starts from point 'B' in Belha village and meets at point 'C' in Kotma village. 'B-C' lines also forms the part of northern boundary of the block.

C-D The line starts from point 'C' in Kotma village and meets at point 'D' in Balpurba village. 'C-D' line also forms the eastern boundary of the block.

D-E The line starts from point 'D' in Balpurba village and meets at point 'E' in Koilari village passing through the southern boundary of Sohagpur village. 'D-E' line forms the southern boundary of the block.

E-F The line starts from point 'E' in Koilari village and meets at point 'F' in Deogawa village passing through the western boundary of Sohagpur village. 'D-E' line forms the part of western boundary of the block.

F-A The line starts from point 'F' in Deogawa village and meets at point 'A' in same village. 'F-A' line also forms part of northern boundary of the block.

[F. No. 43015/ 07 /2014-PRIW-I]

DOMINIC DUNGDUNG, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 66/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/318/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 21st July, 2014

S.O. 2121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 66/2006 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/318/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 6th day of June, 2014

INDUSTRIAL DISPUTE No. 66/2006

Between:

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231. ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/318/2005-IR(CM-II) dated 9.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Thogari Venkati with effect from 26.9.2001 is legal and justified? If not, to what relief the workman is entitled?"

On receipt of the reference, it was numbered as ID No.66/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows :—

Sri Thogari Venkati (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 10.11.1987 and later on he was confirmed as Coal Filler. During the year 2000, while he was working at KK-1 incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 13.2.2001 was issued alleging that during the year 2000 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 14.9.2001. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During

the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 2000, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner. Exclusively relied upon the findings of the Enquiry Officer the impugned order was passed in a cryptic manner. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 5.4.1997 as badli filler and continued so till his dismissal. Earlier the workman was appointed into the services of the company during 1987-88. As he was not regular to duties he was disempanelled vide letter dated 27.2.1993. Upon his representation and assurance to be regular to duties he was again re-empanelled as badli filler w.e.f. 11.11.1993. He failed to correct himself and had put in 07, 045 and 042 musters during the years 1993, 1994 and 1995 respectively. Hence, he was disempanelled vide order dated 3.8.1996. Further, he was given another opportunity considering his representation and assurance by empanelling him as badli coal filler afresh temporarily for a period of 3 months from 3.4.1997 and he reported at KK.1 incline on 5.4.1997. During the calendar year 2000 Workman put only 74 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". Workman acknowledged the receipt of the chargesheet and submitted his explanation to the chargesheet. Thereafter the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. His attendance particulars from 1993 to 2001 are as under:

Year	Musters
1993	007
1994	045
1995	042
1996	NIL
1997	114
1998	104
1999	114
2000	074
2001	030

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness or death of his mother. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. The points arise for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in terminating the services of Sri Thogari Venkati with effect from 26.9.2001 is legal and justified?

II. To what relief the Workman is entitled for?

7. Point No.I:

It is an admitted fact that the Workman has been absent from duty unauthorisedly during the chargesheeted

period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Workman from duty. It is his consistent plea that due to his sickness and family problems he could not attend to the duties.

8. As can be gathered from the material on record, during the course of enquiry workman could not produce any documentary evidence to substantiate his contentions regarding sickness but, he consistently pleaded that his mother expired in the year 2000 due to which he got mentally disturbed and further that as he was sick and was taking ayurvedic treatment during the relevant time, he was unable to attend his duties regularly. It is elicited from him while he was under cross examination during the domestic enquiry that even on occasions when he attended to duties, after booking muster without attending to the work he was to leave the work place due to his incapacity to work. No doubt he never reported sick in any of the company's hospitals and never sought for grant of any kind of leave by his superiors. This is certainly a lapse on his part. But the fact remains that Management is not disputing with the correctness of the contention of the workman that during the year 2000 his mother expired. Mother's death will certainly disturb the tranquillity of a person. Further, Management is not actually disputing with the correctness of the contention of the workman that he was unable to attend to his duties owing to his sickness. It can be said so since not even a suggestion is put to him while he was under cross examination during the enquiry that his contention that he was sick is not correct. Further more, as already discussed above, it is the categorical statement of the workman during the enquiry that even after attending to the duties and booking the musters he was constrained to leave the work place due to his incapacity to work owing to the sickness. In the given circumstances it can not be said that there is no sufficient cause for the workman to be absent from duties at the relevant time. Thus, he being absent from duty does not amount to misconduct.

9. But, it is a lapse on the part of the workman in not reporting sick and not seeking for permission/grant of leave while remaining absent from duties. This certainly resulted into prejudice to the Management since, there would be disruption in the schedule of work due to the workman remaining absent from duty without giving prior information to concerned authorities. But, as already discussed above as there is sufficient cause for the workman to remain absent from duties, his absenteeism as mentioned in the chargesheet does not amount to misconduct as contemplated under the Respondent company's Standing Orders 25.25.

10. It is the contention of the Respondents that it is the habit of the workman to unauthorizedly absent from duties as the Respondent company was compelled to disempanel him twice while he was working as badli filler as he was not regular to his duties and he was empanelled again considering his representation and assurance that he would be regular to his duties. But, the fact remains that as far as the present circumstance is concerned there is sufficient reason for the workman to be absent from his duties. Therefore, it can not be said that his conduct in absenting himself from duties during chargesheeted period strictly comes under the purview of the Respondent company's Standing Orders No.25.25.

11. But, as rightly pointed out for the Respondent the workman remaining absent from duty without seeking for any leave/permission certainly would have resulted into substantial inconvenience and hardship to the Respondent company due to disturbance in the schedule of the work. This lapse on the part of the workman certainly warrants punishment. But, removal from service is not appropriate punishment for the said lapse, as it is grossly disproportionate.

12. In view of the fore gone discussion, it can safely be held that the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of the workman with effect from 26.9.2001 is neither legal nor justified.

This point is answered accordingly.

13. Point No. II:

In view of the finding given while answering Point No.I above, the order of termination of services of the workman with effect from 26.9.2001 passed by the Management of the Respondent company is liable to be set aside. Consequently, he is directed to be reinstated into service as badli filler with effect from 26.9.2001.

14. But, as discussed while deciding Point No.I above, for the lapse of not reporting sick and not seeking for permission/leave while remaining absent from duty on the part of the workman warrants appropriate punishment. To discourage the workman to repeat such conduct in future and also considering the past conduct of the workman which lead to his disempanellment, stoppage of atleast three annual grade increments with cumulative effect is appropriate punishment. Further, the workman is not entitled for any back wages. But he is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of the workman Sri Thogari Venkati, the workman with effect from 26.9.2001 is hereby held as neither legal nor justified and the same is hereby set aside. The Workman shall be reinstated into service as badli filler forthwith, with effect from 26.9.2001. He is awarded with the punishment of stoppage of three annual grade increments with cumulative effect. He is not entitled for any back wages, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 6th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2122.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 67/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/317/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/317/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 16th day of June, 2014

INDUSTRIAL DISPUTE No. 67/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/317/2005-IR (CM-II) dated 9.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Gaddala Posham with effect from 31.7.2001 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.67/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana and K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma and Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. **The Petitioner filed his claim statement with the averments in brief as follows:**

Sri Gaddala Posham (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 16.6.1981. During the year 1999, while he was working at SMG-1 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 24.1.2000 was issued alleging that during the year 1999 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No. 25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 23.7.2001. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 1999 was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. **Respondent filed his counter with the averments in brief as follows:**

The workman was initially appointed in the Respondent's company on 8.6.1981 as badli filler and was regularised as coal filler w.e.f. 1.1.1995. The workman was working at SMG.1 Incline of Mandamarri Area. During the calendar year 1999 Workman put in only 92 musters as such the chargesheet was issued under Standing No. 25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman submitted his written explanation. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in the following musters during the years 1997 to 2000:-

Year	Actual Attendance
1997	146
1998	133
1999	092
2000	130

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Gaddala Posham w.e.f. 31.7.2001 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I:

It is an admitted fact that the Petitioner has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent plea that due to his sickness and also family problems he could not attend to the duties. He stated while making his statement during the Departmental enquiry that for his ill-health he took treatment from company's hospital and also from private hospitals. No doubt, he did not produce any medical record. But he has not been subjected to any cross examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Petitioner with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Petitioner from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Petitioner has put in long service of 19 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Petitioner during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Petitioner has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct.Thus, the action of the Respondent Management ie M/s. Singareni Collieries Company Limited in terminating the services of Shri Gaddala Posham w.e.f. 31.7.2001 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No. II:

No doubt, as per the finding given in Point No.I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Petitioner for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No.P/MM/7/2/99/4424 dated 23.7.2001 w.e.f. 31.7.2001 as illegal and arbitrary and setting

aside the same. Instead Petitioner shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result:

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Gaddala Posham w.e.f. 31.7.2001 is declared as neither legal nor justified and is hereby set aside. The Petitioner shall be reinstated into service as Coal filler forthwith, with effect from 31.7.2001. He is awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 16th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 68/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/314/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/314/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 16th day of June, 2014

INDUSTRIAL DISPUTE No. 68/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana and K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma and Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/314/2005-IR (CM-II) dated 9.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Beesaboina Ramulu with effect from 22.1.2002 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No. 68 /2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. **The Petitioner filed his claim statement with the averments in brief as follows:**

Sri Beesaboina Ramulu (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 8.2.1986 and later on he was confirmed as Coal Filler. During the year 2000, while he was working at MK-4 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 3.3.2001 was issued alleging that during the year 2000 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 18.1.2002. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 2000 was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. **Respondent filed his counter with the averments in brief as follows:**

The workman was initially appointed in the Respondent's company on 8.2.1986 as badli filler and was regularised as coal filler. The workman was working at MK-4 Incline of Mandamarri Area. During the calendar year 2000 Workman put in only 90 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman has submitted his written explanation. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in 143, 148, 138, 156, 90 and 76 musters in the years 1996, 1997, 1998, 1999, 2000 and 2001 respectively. The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating

the services of Shri Beesaboina Ramulu w.e.f. 22.1.2002 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No.I:

It is an admitted fact that the Petitioner has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent plea that due to his sickness and also family problems he could not attend to the duties. He stated while making his statement during the Departmental enquiry that for his ill-health he took ayurvedic treatment at his village. No doubt, he did not produce any medical record. But he has not been subjected to any cross examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Petitioner with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Petitioner from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Petitioner has put in long service of 15 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Petitioner during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Petitioner has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management ie., M/s. Singareni Collieries Company Limited in terminating the services of Shri Beesaboina Ramulu w.e.f. 22.1.2002 is held as neither legal nor justified.

This point is answered accordingly.

12. **Point No. II:**

No doubt, as per the finding given in Point No.I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Petitioner for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No. RKP/Per/R/016/253 dated 18.1.2002 as illegal and arbitrary and setting aside the same. Instead Petitioner shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages

only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Beesaboina Ramulu w.e.f. 22.1.2002 is declared as neither legal nor justified and is hereby set aside. The Petitioner shall be reinstated into service as Coal filler forthwith, with effect from 22.1.2002. He is awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 16th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 69/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/309/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/309/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 17th day of June, 2014

INDUSTRIAL DISPUTE No. 69/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy,Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/309/2005-IR(CM-II) dated 9.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri K. Srinivas with effect from 29.5.2001 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.69/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Workman and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows :

Sri K. Srinivas(who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as filler on 11.1.1985 and later on he was converted as Timberman on 24.1.1986. During the year 2000, while he was working at SMG-3 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 18.1.2000 was issued alleging that during the year 2000 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Workman was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Workman from service vide office order dated 22.5.2001. The procedure of the enquiry was not explained to the Workman though Workman is an illiterate. Thus, Workman could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Workman which caused prejudice to the Workman. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Workman. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Workman categorically pleaded that his inability to perform the duties during the year 2000 was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Workman and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Workman is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Workman is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 11.1.1985 as filler and was regularised as Timberman. The workman was working at Smg.3 Incline of Mandamarri Area. During the calendar year 1999 Workman put in only 73 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman did not submit his written explanation. Thereafter the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in 069., 070, 083, 098, 073, 070 and 063 musters respectively during the years 1995, 1996, 1997, 1998, 1999, 2000 and 2001 and failed to improve at all though sufficient time was at his disposal. The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Workman and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating

the services of Shri K. Srinivas w.e.f. 29.5.2001 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I:

It is an admitted fact that the Workman has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Workman from duty. It is his consistent plea that due to his sickness and also family problems he could not attend to the duties. He stated during the Departmental enquiry that he was suffering from chest pain and fever and he took treatment from company's hospital and reported sick for 167 days of absence. No doubt, he has neither produced any medical record nor reported sick on other days of absence from duty. But he has not been subjected to any cross examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Workman with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Workman from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Workman has put in long service of 15 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Workman has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Workman. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Workman by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Workman during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Workman has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Workman is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management i.e. M/s. Singareni Collieries Company Limited in terminating the services of Shri K. Srinivas w.e.f. 29.5.2001 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No. II :

No doubt, as per the finding given in Point No.I, the impugned order whereunder Workman has been dismissed from service is liable to be set aside. But the fact remains that Workman remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Workman is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Workman for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Workman is to be reinstated into service consequent to the declaration that the impugned order No.P/MM/7/2/01/2353 dated 22.5.2001 with effect from 29.5.2001 as illegal and arbitrary

and setting aside the same. Instead Workman shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri K. Srinivas w.e.f. 29.5.2001 is declared as neither legal nor justified and is hereby set aside. The Workman shall be reinstated into service as Timberman forthwith, with effect from 29.5.2001. He is awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 17th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 70/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/311/2005-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014

[No. L-22012/311/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 16th day of June, 2014

INDUSTRIAL DISPUTE No. 70/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

APPEARANCES :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy,Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/311/2005-IR(CM-II) dated 9.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Koppula Odelu with effect from 11.10.2002 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No. 70/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Koppula Odelu (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 31.12.1991 and later on he was confirmed as Coal Filler in 1995. During the year 2000, while he was working at SMG-3 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 4/9.10.2001 was issued alleging that during the year 2000 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Workman was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Workman from service vide office order dated 30.9.2002 w.e.f. 11.10.2002. The procedure of the enquiry was not explained to the Workman though Workman is an illiterate. Thus, Workman could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Workman which caused prejudice to the Workman. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Workman. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Workman categorically pleaded that his inability to perform the duties during the year 2000, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Workman and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Workman is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Workman is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 6.12.1991 as badli filler and was regularised as coal filler. The workman was working at Smg.3 Incline of Mandamarri Area. During the calendar year 2000 Workman put in only 99 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman did not submit his written explanation. Thereafter the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in the following musters during the years 1997 to 2001:-

Year	Actual Attendance
1997	131 days
1998	095 days
1999	128 days
2000	099 days
2001	102 days

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. However, on the assurance of the workman to put in 22 filling musters every month and fill two and more tubs per muster, he was given three months time to improve his attendance and filling performance w.e.f. 30.4.2002. But during the observation period of three months from 1.5.2002 to 31.7.2002 out of 78 working days workman had worked for 30 days only. Thus, he failed to keep up his own assurances. Hence, the Respondent company is compelled to take severe action against the

unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Workman and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Koppula Odelu w.e.f. 11.10.2002 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Workman has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Thus, now it is to be verified whether there is any sufficient cause for the absence of the Workman from duty. It is his consistent plea that due to his wife's sickness who has been suffering from brain tumor since 1996, he could not attend to the duties regularly as he has to accompany her for treatment from time to time. He stated during the Departmental enquiry that for his wife's ill-health treatment was taken from company's hospital and also from private hospitals. No doubt, he did not produce any medical record. But he has not been subjected to any cross examination for the management, regarding his claim that his wife was seriously sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Workman with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Workman from duty. The only lapse on his part is not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Workman has put in long service of 10 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Workman has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Workman. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Workman by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the workman during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct.

11. As can be gathered from the impugned proceedings workman has been given an opportunity to improve his attendance and he was put in observation for three months before passing final orders. Thereon, the Disciplinary Authority observed that even during this period of three months the attendance of the Petitioner was found to be not satisfactory and proceeded with passing final order of dismissal of the Petitioner from service. Evidently, before passing such final order no opportunity has been afforded to the Petitioner regarding his attendance during these three months observation period. So there was no opportunity for him to know about the truth or otherwise of the allegation that his attendance during the said period of three months was not satisfactory and to offer any explanation regarding the same.

12. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Workman has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

13. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Workman is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the

Respondent Management i. e. M/s. Singareni Collieries Company Limited in terminating the services of Shri Koppula Odelu w.e.f. 11.10.2002 is held as neither legal nor justified.

This point is answered accordingly.

14. Point No. II :

No doubt, as per the finding given in Point No.I, the impugned order whereunder Workman has been dismissed from service is liable to be set aside. But the fact remains that Workman remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

15. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Workman is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Workman for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

16. In view of the fore gone discussion, Workman is to be reinstated into service consequent to the declaration that the impugned order No.MMR/PER/ D/072/4101 dated 11.10.2002 as illegal and arbitrary and setting aside the same. Instead Workman shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Koppula Odelu w.e.f. 11.10.2002 is declared as neither legal nor justified and is hereby set aside. The Workman shall be reinstated into service as Coal filler forthwith, with effect from 11.10.2002. He is awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 16th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 71/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/20/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/20/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 17th day of June, 2014

INDUSTRIAL DISPUTE No. 71/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

And

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy,Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/20/2006-IR (CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Kunsoth Shankar with effect from 16.12.1998 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.71/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Workman and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Kunsoth Shankar (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 16.7.1991 and later on he was confirmed as Coal Filler on 1.9.1995. During the year 1996, while he was working at RK-1A Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 14.9.1998 was issued alleging that during the year 1996 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Workman was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Workman from service vide office order dated 16.12.1998. The procedure of the enquiry was not explained to the Workman though Workman is an illiterate. Thus, Workman could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Workman which caused prejudice to the Workman. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Workman. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Workman categorically pleaded that his inability to perform the duties during the year 1996, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Workman and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Workman is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Workman is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 16.7.1991 as badli filler and was regularised as coal filler on 1.9.1995. The workman was working at RK.1A Incline of Mandamarri Area. During the calendar year 1996 Workman put in only 53 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman has submitted his written explanation. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in 034, 053, 108 and 077 musters during the years 1995, 1996, 1997

and 1998 respectively and failed to improve at all though sufficient time was at his disposal. The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.2013 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Workman and the same are received and considered.

6. **The points arise for determination are :**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Kunsoth Shankar w.e.f. 16.12.1998 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Workman has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Workman from duty. It is his consistent plea that due to his sickness and also family problems he could not attend to the duties. He stated while making his statement during the Departmental enquiry that he suffered from Jaundice and he took treatment at his native place Pulimadugu from village RMP Doctor as such, he could not produce any documents or treatment slips. No doubt, he did not produce any medical record. But he has not been subjected to any cross examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Workman with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Workman from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Workman has put in long service of 7 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Workman has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Workman. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Workman by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Workman during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Workman has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Workman is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management i.e. M/s. Singareni Collieries Company Limited in terminating the services of Shri Kunsoth Shankar w.e.f. 16.12.1998 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No. II :

No doubt, as per the finding given in Point No.I, the impugned order whereunder Workman has been dismissed from service is liable to be set aside. But the fact remains that Workman remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/leave from his higher-ups while remaining absent from duty. Thus, Workman is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Workman for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Workman is to be reinstated into service consequent to the declaration that the impugned order dated 16.12.1998 as illegal and arbitrary and setting aside the same. Instead Workman shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Kunsoth Shankar w.e.f. 16.12.1998 is declared as neither legal nor justified and is hereby set aside. The Workman shall be reinstated into service as Coal filler forthwith, with effect from 16.12.1998. He is awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 17th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 72/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/18/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/18/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 18th day of June, 2014

INDUSTRIAL DISPUTE No. 72/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/18/2006-IR(CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Durgam Bheemaiah with effect from 10.9.2001 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.72/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Workman and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Durgam Bheemaiah(who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 12.5.1997. During the year 2000, while he was working at KK-1 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 13.2.2001 was issued alleging that during the year 2000 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Workman was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Workman from service vide office order dated 25.8.2001. The procedure of the enquiry was not explained to the Workman though Workman is an illiterate. Thus, Workman could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Workman which caused prejudice to the Workman. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Workman. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Workman categorically pleaded that his inability to perform the duties during the year 2000 was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Workman and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Workman is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Workman is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 12.5.1997 as badli filler and continued to be so till dismissal without getting regularised as coal filler. The workman was working at KK.1 Incline of Mandamarri Area. During the calendar year 2000 Workman put in only 10 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman submitted his written explanation. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in the following musters during the years from 1997 to 2001:-

Year	Actual Attendance
1997	100 days
1998	119 days
1999	134 days
2000	010 days
2001	015 days

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Workman and the same are received and considered.

6. The points arise for determination are:

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Durgam Bheemaiah w.e.f. 10.9.2001 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Workman has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Workman from duty. It is his consistent plea that due to his sickness and he could not attend to the duties. He stated while making his statement during the Departmental enquiry that he was appointed as a dependent of his father. He could not work on hard job of coal filling due to his weak personality and he was attacked by poison by his enemies and was provided treatment under superstitious belief from village ayurvedic Doctor. No doubt, he did not produce any medical record. But he has not been subjected to any cross examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Workman with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Workman from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Workman has put in a service of 3 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Workman has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Workman. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Workman by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Workman during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Workman has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that

Workman is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management ie M/s. Singareni Collieries Company Limited in terminating the services of Shri Durgam Bheemaiah w.e.f. 10.9.2001 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No.II:

No doubt, as per the finding given in Point No.I, the impugned order whereunder Workman has been dismissed from service is liable to be set aside. But the fact remains that Workman remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/leave from his higher-ups while remaining absent from duty. Thus, Workman is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Workman for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Workman is to be reinstated into service consequent to the declaration that the impugned order No.P/MM/7/2/01/4002 dated 25.8.2001 w.e.f. 10.9.2001 as illegal and arbitrary and setting aside the same. Instead Workman shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect and further, he shall be denied the back wages to discourage him in repeating such conduct of remaining absent from duty without reporting to the higher-ups/without taking permission that too at the very earlier stages of his employment. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Durgam Bheemaiah w.e.f. 10.9.2001 is declared as neither legal nor justified and is hereby set aside. The Workman shall be reinstated into service as Badli filler forthwith, with effect from 10.9.2001. He is awarded with the punishment of stoppage of one annual grade increment without cumulative effect and further, he is not entitled for any back wages, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 18th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 73/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/21/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 73/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/21/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 18th day of June, 2014

INDUSTRIAL DISPUTE No. 73/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/21/2006-IR(CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Durgam Ramulu with effect from 16.12.1998 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.73/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Workman and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Durgam Ramulu(who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 11.11.1993 and later on he was confirmed as Coal Filler. During the year 1997, while he was working at KK-5 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 6.8.1998 was issued alleging that during the year 1997 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Workman was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Workman from service vide office order dated 11.12.1998 w.e.f. 16.12.1998. The procedure of the enquiry was not explained to the Workman though Workman is an illiterate. Thus, Workman could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Workman which caused prejudice to the Workman. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Workman. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Workman categorically pleaded that his inability to perform the duties during the year 1997, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Workman and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Workman is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Workman is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 11.10.1993 as badli filler and was regularised as coal filler w.e.f. 1.9.1995. The workman was working at KK-5 Incline of Mandamarri Area. During the calendar year 1997 Workman put in only 75 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman did not submit his written explanation. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of

misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in the following musters during the years from 1995 to 1998:-

Year	Actual Attendance
1995	120 days
1996	90 days
1997	75 days
1998	004 days

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Workman and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Durgam Ramulu w.e.f. 16.12.1998 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Workman has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Workman from duty. It is his consistent plea that due to his sickness and he could not attend to the duties. He stated while making his statement during the Departmental enquiry that he was suffering from back ache, legs pain and fever and for his ill-health he took treatment from company's hospital as well as from private hospitals. No doubt, he did not produce any medical record. But he has not been subjected to any cross examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Workman with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Workman from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Workman has put in long service of 6 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Workman has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Workman. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Workman by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Workman during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted

period is in the status of mere allegation only for the reason that Workman has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Workman is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management i.e. M/s. Singareni Collieries Company Limited in terminating the services of Shri Durgam Ramulu w.e.f. 16.12.1998 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No. II :

No doubt, as per the finding given in Point No.I, the impugned order whereunder Workman has been dismissed from service is liable to be set aside. But the fact remains that Workman remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Workman is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Workman for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Workman is to be reinstated into service consequent to the declaration that the impugned order No.P/RKP/16/98/641 dated 16.12.1998 as illegal and arbitrary and setting aside the same. Instead Workman shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect and further, he shall be denied the back wages to discourage him in repeating such conduct of remaining absent from duty without reporting to the higher-ups/without taking permission. But he is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Durgam Ramulu w.e.f. 16.12.1998 is declared as neither legal nor justified and is hereby set aside. The Workman shall be reinstated into service as Coal filler forthwith, with effect from 16.12.1998. He is awarded with the punishment of stoppage of one annual grade increment without cumulative effect and further, he is not entitled for any back wages, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 18th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 74/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/47/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.74/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/47/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 18th day of June, 2014

INDUSTRIAL DISPUTE No. 74/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

APPEARANCES :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/47/2006-IR (CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Sandra Chandraiah with effect from 9.3.1999 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.74/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Workman and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Sandra Chandraiah(who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 31.10.1982 and later on he was confirmed as Coal Filler. During the year 1997, while he was working at KK-3 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 15.5/13.7.99 was issued alleging that during the year 1997 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Workman was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Workman from service vide office order dated 2.3.1999. The procedure of the enquiry was not explained to the Workman though Workman is an illiterate. Thus, Workman could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Workman which caused prejudice to the Workman. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Workman. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Workman categorically pleaded that his inability to perform the duties during the year 1997, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Workman and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Workman is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Workman is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 31.10.1982 as badli filler and continued so till his dismissal without getting regularised as coal filler coal filler. The workman was working at KK.5A Incline of Mandamarri Area. During the calendar year 1997 Workman put in only 75 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman submitted his written

explanation. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The following are the attendance particulars of the workman during the years 1995 to 1999:

Year	Actual Attendance
1995	089 days
1996	046 days
1997	075 days
1998	011 days
1999	Nil upto 9.3.1999

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Workman and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Sandra Chandraiah w.e.f. 9.3.1999 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Workman has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Workman from duty. It is his consistent plea that due to his sickness he could not attend to the duties. He stated while making his statement during the Departmental enquiry that he was appointed in the company in 1982 and got disempanelled from service in July, 1996 at SMG.3 incline and got reempanelled from November, 1996 at KK.5A incline. He further stated that due to the injury to his back bone which was caused in Mine Accident in SMG-3 incline in 1983 he could not work regularly and that for his ill-health he took treatment in company's hospital and also from private hospitals. No doubt, he did not produce any medical record. But he has not been subjected to any cross examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Workman with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Workman from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Workman has put in long service of 15 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Workman has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the

Workman. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Workman by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Workman during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Workman has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Workman is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management ie M/s. Singareni Collieries Company Limited in terminating the services of Shri Sandra Chandraiah w.e.f. 9.3.1999 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No.II:

No doubt, as per the finding given in Point No.I, the impugned order whereunder Workman has been dismissed from service is liable to be set aside. But the fact remains that Workman remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Workman is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Workman for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Workman is to be reinstated into service consequent to the declaration that the impugned order No.P/MM/7/2/99/744 dated 2.3.1999 as illegal and arbitrary and setting aside the same. Instead Workman shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Sandra Chandraiah w.e.f. 9.3.1999 is declared as neither legal nor justified and is hereby set aside. The Workman shall be reinstated into service as Badli filler forthwith, with effect from 9.3.1999. He is awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 18th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 75/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/46/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/46/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 4th day of June, 2014

INDUSTRIAL DISPUTE No. 75/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231
Adilabad District. ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/46/2006-IR(CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Gajula Shankar with effect from 10.2.1999 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.75/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Gajula Shankar (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 17.12.1988 and later on he was confirmed as Coal Filler. During the year 1997, while he was working at KK-5 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 21.8.1998 was issued alleging that during the year 1997 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 4.2.1999. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 1997, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not

employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 28.8.1994 as badli filler and continued so till his dismissal without getting regularized as coal filler. The workman was working at KK.5 Incline of Mandamarri Area. During the calendar year 1997 Workman put in only one muster as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman submited his written explanation dated 24.8.1998. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He has submitted that during enquiry that he suffered from serious ill health i.e., chest problem, swelling in the chest and lungs, water was removed from the lungs; got jaundice and also stomache swelling and gastric trouble; that he got unidentified disease; that he was treated at MGM Hospital, Warangal from 5.1.1997 to 16.9.1997 as in-patient and as out patient from Dr. B. Mohan Rao, Civil Asst. Surgeon but he did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in 1 muster only in the year 1997. The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Gajula Shankar w.e.f. 10.2.1999 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Petitioner has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent plea that due to his sickness and also family problems he could not attend to the duties. He stated while making his statement during the Departmental enquiry that for his ill-health he took treatment from Osmania General Hospital, Hyderabad, Government Hospital-Warangal, Respondent's company hospitals and also from private hospitals. He produced medical record also. According to him he suffered from chest problem, swelling in the chest and lungs and water was removed from the lungs and that he got jaundice and stomache swelling and gastric trouble and also suffered from unidentified disease. He has been subjected to cross examination for the management, regarding his claim that he was sick during relevant time. But, as can be seen from the tenor of the cross examination, management has not been in a position to contradict or dispute with the correctness of the contentions of the Petitioner with this regard. Nothing prevents them to seek information from their company hospitals to verify the correctness of the claim of the workman that he took treatment from the said hospital. Like wise, nothing prevents the management to refer the

workman to a medical expert to verify the correctness or otherwise of his statement regarding the ailments he suffered and the treatment taken by him. But they have not done so. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Petitioner from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Petitioner has put in service of 3 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Petitioner during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Petitioner has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management i.e. M/s. Singareni Collieries Company Limited in terminating the services of Shri Gajula Shankar w.e.f. 10.2.1999 vide order dated 4.2.1999 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No. II :

No doubt, as per the finding given in Point No.I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. But, the record shows that he made efforts to attend the duty even while taking treatment as out patient but evidently he could not be regular to his duty due to the ailment spoken off by him while making his statement during the Departmental enquiry. Inspite of it and as already discussed above while deciding Point No.I, punishment of dismissal from service for the very first event of misconduct which is not even completely proved, has been awarded to him is not reasonable. Considering the circumstances of the case and since workman who was seriously sick and therefore was unable to attend to his duty was thrown out of service and he remained in the said state till now, he deserves no punishment for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No.P/MM/7/2/99/370 dated 4.2.1999 as illegal and arbitrary and setting aside the same. He is entitled for full back wages and all other attendant benefits.

This point is answered accordingly.

Result:

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Gajula Shankar w.e.f. 10.2.1999 is declared as neither legal nor justified and is hereby set aside. The Petitioner shall be reinstated into service as Badli filler forthwith, with effect from 10.2.1999. He is entitled for full back wages and all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 4th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2131.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 76/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/49/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.76/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/49/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 16th day of June, 2014

INDUSTRIAL DISPUTE No. 76/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 …Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 …Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/49/2006-IR(CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Md. Allauddin w.e.f. 24.7.1998 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.76/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Md. Allauddin (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as Badli Filler on 7.12.1988 and later on he was confirmed as Coal Filler. During the year 1997, while he was working at KK-5A incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a charge-sheet dated 26.2.1998 was issued alleging that during the year 1997 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 15.7.1998. The procedure of the enquiry was not

explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross- examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 1997, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner. Exclusively relied upon the findings of the Enquiry Officer the impugned order was passed in a cryptic manner. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. **Respondent filed his counter with the averments in brief as follows:**

The workman was initially appointed in the Respondent's company on 17.12.1988 as badli filler and continued so till his dismissal without getting regularized as coal filler, which shows that he was not regular to duties. During the calendar year 1997 Workman has put in only 016 musters as such the charge-sheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". Workman acknowledged the receipt of the chargesheet and submitted his explanation to the chargesheet. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross-examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. His attendance particulars from 1995 to 1998 are as under:

Year	Musters
1995	068
1996	049
1997	016
1998	025 (upto 20.7.1998)

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness or death of his mother. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are :**

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in terminating the services of Sri Md. Allauddin with effect from 15.7.1998 is legal and justified?

II. To what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Workman has been absent from duty unauthorisedly during the charge-sheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Workman from duty. It is his consistent

plea that due to his sickness and family problems he could not attend to the duties.

8. As can be gathered from the material on record, during the course of enquiry workman could not produce any documentary evidence to substantiate his contentions regarding sickness but, he consistently pleaded that his father expired in the year 1997 due to which he got mentally disturbed and further that as he was suffering from stomache ache, chest ache and mental disorder and was taking ayurvedic treatment as well as treatment in private clinics during the relevant time, he was unable to attend his duties regularly. No doubt he never reported sick in any of the company's hospitals and never sought for grant of any kind of leave by his superiors. This is certainly a lapse on his part. But the fact remains that Management is not disputing with the correctness of the contention of the workman that during the year 1997 his father expired. Father's death will certainly disturb the tranquillity of a person. Further, Management is not actually disputing with the correctness of the contention of the workman that he was unable to attend to his duties owing to his sickness. It can be said so since not even a suggestion is put to him while he was under cross-examination during the enquiry that his contention that he was sick is not correct. In the given circumstances it can not be said that there is no sufficient cause for the workman to be absent from duties at the relevant time. Thus, he being absent from duty does not amount to misconduct.

9. But, it is a lapse on the part of the workman in not reporting sick and not seeking for permission/grant of leave while remaining absent from duties. This certainly resulted into prejudice to the Management since, there would be disruption in the schedule of work due to the workman remaining absent from duty without giving prior information to concerned authorities. But, as already discussed above as there is sufficient cause for the workman to remain absent from duties, his absenteeism as mentioned in the chargesheet does not amount to misconduct as contemplated under the Respondent company's Standing Orders 25.25.

10. It is the contention of the Respondents that it is the habit of the workman to be unauthorizedly absent from duties as the Respondent company was compelled to disempanel him while he was working as badli filler as he was not regular to his duties and he was empanelled again considering his representation and assurance that he would be regular to his duties. But, the fact remains that as far as the present circumstance is concerned there is sufficient reason for the workman to be absent from his duties. Therefore, it can not be said that his conduct in absenting himself from duties during chargesheeted period strictly comes under the purview of the Respondent company's Standing Orders No. 25.25.

11. But, as rightly pointed out for the Respondent the workman remaining absent from duty without seeking for any leave/permission certainly would have resulted into substantial inconvenience and hardship to the Respondent company due to disturbance in the schedule of the work. This lapse on the part of the workman certainly warrants punishment. But, removal from service is not appropriate punishment for the said lapse, as it is grossly disproportionate.

12. In view of the fore gone discussion, it can safely be held that the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of the workman with effect from 24.7.1998 is neither legal nor justified.

This point is answered accordingly.

13. Point No. II :

In view of the finding given while answering Point No.I above, the order of termination of services of the workman with effect from 24.7.1998 passed by the Management of the Respondent company is liable to be set aside. Consequently, he is directed to be reinstated into service as badli filler with effect from 24.7.1998.

14. But, as discussed while deciding Point No.I above, for the lapse of not reporting sick and not seeking for permission/leave while remaining absent from duty on the part of the workman warrants appropriate punishment. To discourage the workman to repeat such conduct in future and also considering the past conduct of the workman which lead to his disempanellment, stoppage of atleast one annual grade increment with cumulative effect is appropriate punishment. Further, the workman is not entitled for any back wages. But he is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of the workman Sri Md. Allauddin, the workman with effect from 24.7.1998 is hereby held as neither legal nor justified and the same is hereby set aside. The Workman shall be reinstated into service as badli filler forthwith, with effect from 24.7.1998. He is awarded with the punishment of stoppage of one annual grade increment with cumulative effect. He is not entitled for any back wages, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 16th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 77/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/12/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/12/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30th day of May, 2014

INDUSTRIAL DISPUTE No. 77/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 ...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ...Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/12/2006-IR(CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Bhukya Pantulu with effect from 18.2.1999 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.77/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. **The Petitioner filed his claim statement with the averments in brief as follows:**

Sri Bhukya Pantulu (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 3.12.1974 and later on he was confirmed as Coal Filler. During the year 1997, while he was working at KK-1 incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 9.2.1998 was issued alleging that during the year 2000 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 18.2.1999. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The

Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 1997, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 30.12.1974 as badli filler and was regularised as coal filler. The workman was working at RK.1 incline but not at KK.1 incline, the unit which was closed long back as averred by him in the claim statement. During the calendar year 1997 Workman put only 74 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". Workman acknowledged the receipt of the chargesheet but did not submit his explanation to the chargesheet. Thereafter the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. His attendance particulars from 1995 to 1998 are as under :

Year	Actual Attendance
1995	107 days
1996	132 days
1997	074 days
1998	097 days

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness or death of his mother. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Bhukya Pantulu w.e.f. 18.2.1999 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I:

It is an admitted fact that the Petitioner has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absent from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent plea that due to his sickness and also family problems he could not attend to the duties. He stated while making his statement during the Departmental enquiry that for his ill-health and suffering from back ache, he took treatment from private hospitals. No doubt, he did not produce any

medical record. Apart from it, the Petitioner elaborated his ill-health and suffering from back ache due to which he could not attend to the duty during the chargesheeted period. Inspite of it he has not been subjected to any cross examination for the management, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Petitioner with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Petitioner from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Petitioner has put in long service of 22 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Petitioner during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Petitioner has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management ie M/s. Singareni Collieries Company Limited in terminating the services of Shri Bhukya Pantulu w.e.f. 18.2.1999 is neither legal nor justified.

This point is answered accordingly.

12. Point No. II :

No doubt, as per the finding given in Point No.I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No. I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Petitioner.

14. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No. P/RKP/16/99/431 dated 18.2.1999 as illegal and arbitrary and setting aside the same. Instead Petitioner shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Bhukya Pantulu w.e.f. 18.2.1999 is declared as neither legal nor justified and is hereby set aside. The Petitioner is reinstated into service as Coal filler forthwith, with effect from 18.2.1999. He shall be awarded with the punishment of stoppage of one annual increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 30th day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2133.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 78/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था ।

[सं. एल-22012/11/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 78/2006 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/11/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30th day of May, 2014

INDUSTRIAL DISPUTE No. 78/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/11/2006-IR (CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Pannala Iylaiah with effect from 28.2.2000 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.78/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana and K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Pannala Iylaiah (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 3.11.1986 and later on he was confirmed as Coal Filler on 1.1.1995. During the year 1998, while he was working at Kasipet Mine, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 28.2.1999 was issued alleging that during the year 1998 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No. 25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman

has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 20.2.2000. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross-examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 1998, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 3.11.1986 as badli filler and was regularised as coal filler from 1.1.1995. The workman was working at Kasipet Mine of Mandamarri Area. During the calendar year 1997 Workman put in only 74 musters as such the chargesheet was issued under Standing No. 25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". Workman acknowledged the receipt of the chargesheet and had submitted his written explanation dated 10.3.1999. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross-examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. His attendance particulars from 1996 to 2000 are as under:

Year	Actual Attendance
1996	129 days
1997	101 days
1998	047 days
1999	013 days
2000	Nil

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. The points arise for determination are:

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Pannala Iyaliah w.e.f. 28.2.2000 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Petitioner has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must

be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent plea that due to his sickness and also family problems he could not attend to the duties. He stated while making his statement during the Departmental enquiry that for his ill-health he took treatment from private hospitals. No doubt, he did not produce any medical record. But he has not been subjected to any cross-examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Petitioner with this regard. In the given circumstances it cannot be said that there is no sufficient cause for the absence of the Petitioner from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Petitioner has put in long service of 14 years in the Respondent organization and only due to the above referred cause, he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Petitioner during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct, but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Petitioner has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management i.e. M/s. Singareni Collieries Company Limited in terminating the services of Shri Pannala Iylaiah w.e.f. 28.2.2000 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No.II:

No doubt, as per the finding given in Point No.I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Petitioner for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No.P/MM/7/2/00/802 dated 20.2.2000 w.e.f. 28.2.2000 as illegal and arbitrary and setting aside the same. Instead Petitioner shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result:

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Pannala Iylaiah w.e.f. 28.2.2000 is declared as neither legal nor justified and is hereby set aside. The Petitioner shall be reinstated into service as Coal filler forthwith, with effect from 28.2.2000. He is awarded with the punishment of stoppage of one annual increment without

cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 30th day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 79/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/13/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2134.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.79/2006 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/13/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated: the 3rd day of June, 2014

INDUSTRIAL DISPUTE No. 79/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 ... Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ... Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

By virtue of reference No. L-22012/13/2006-IR(CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Bukya Balya with effect from 26.2.1998 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.79/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Bukya Balya (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 8.2.1986 and later on he was confirmed as Coal Filler. During the year 1998, while he was working at KK-3 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 12.6.1997 was issued alleging that during the year 1996 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No. 25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of

the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 26.2.1998. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross-examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 1996, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 8.2.1986 as badli filler and was regularised as coal filler. The workman was working at RK.3 Incline of Mandamarri Area. During the calendar year 1996 Workman put in only 48 musters as such the chargesheet was issued under Standing No. 25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman did not submit his written explanation. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in 48 musters in 1996 and 31 musters only in the year 1997. The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Bukya Balya w.e.f. 26.2.1998 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Petitioner has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "Habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent

plea that due to his sickness and also family problems he could not attend to the duties. He stated while making his statement during the Departmental enquiry that for his ill-health i.e., stomach pain he took treatment from private hospitals and also area hospital. No doubt, he did not produce any medical record. But he has not been subjected to any cross examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Petitioner with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Petitioner from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Petitioner has put in long service of 12 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Petitioner during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Petitioner has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management i.e. M/s. Singareni Collieries Company Limited in terminating the services of Shri Bukya Balya w.e.f. 26.2.1998 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No. II :

No doubt, as per the finding given in Point No.I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Petitioner for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No.P/RKP/16/98/641 dated 26.2.1998 as illegal and arbitrary and setting aside the same. Instead Petitioner shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Bukya Balya w.e.f. 26.2.1998 is declared as neither legal nor justified and is hereby set aside. The Petitioner shall be reinstated into service as Coal filler forthwith, with effect from 26.2.1998. He is awarded with the

punishment of stoppage of one annual increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2135.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 80/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/10/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2135.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/10/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 16th day of June, 2014

INDUSTRIAL DISPUTE No. 80/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. M.V. Hanumantha Rao & K. Seetharama Rao, Advocates

AWARD

By virtue of reference No. L-22012/10/2006-IR(CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Madoti Raju with effect from 9.10.1998 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No. 80/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. M.V. Hanumantha Rao & K. Seetharama Rao, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Madoti Raju (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 11.12.1982 and later on he was confirmed as Coal Filler. During the year 1997, while he was working at KK-5A Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 6.4.1998 was issued alleging that during the year 1997 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No. 25.25. Thereafter a routine

and mechanical enquiry was conducted wherein Workman was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Workman from service vide office order dated 3.10.1998. The procedure of the enquiry was not explained to the Workman though Workman is an illiterate. Thus, Workman could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Workman which caused prejudice to the Workman. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Workman. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Workman categorically pleaded that his inability to perform the duties during the year 1997, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Workman and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Workman is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Workman is not employed elsewhere after the date of impugned order. Hence, the petition.

3. **Respondent filed his counter with the averments in brief as follows:**

The workman was initially appointed in the Respondent's company on 11.12.1982 as badli filler and continued to be so without regularization till dismissal. The workman was working at Smg.3 Incline and for his poor attendance and chronic absenteeism he was disempanelled on 9.8.1996. Upon his representation and assurance to be regular to duties he was again re-empanelled as badli filler w.e.f. 18.11.1996. He failed to correct himself and had put in 16 musters during the year 1997, as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". Workman acknowledged the receipt of the chargesheet and submitted his explanation to the chargesheet. There after the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. His attendance particulars from 1993 to 1998 are as under:

Year	Musters
1993	104 days
1994	108 days
1995	051 days
1996	045 days
1997	016 days
1998	009 days

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are :**

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in terminating the services of Sri Madoti Raju with effect from 9.10.1998 is legal and justified?

II. To what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Workman has been absent from duty unauthorisedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Workman from duty. It is his consistent plea that due to his sickness and family problems he could not attend to the duties.

8. As can be gathered from the material on record, during the course of enquiry workman could not produce any documentary evidence to substantiate his contentions regarding sickness but, he consistently pleaded that he suffered from slow fever, stomach pain and chest pain and he was unable to attend his duties regularly. He has stated during the domestic enquiry that he suffered from chest pain, back pain etc., and was taking ayurvedic treatment during the relevant time. According to him as his residence is far away from company's hospital he could not take treatment from company's hospital. He explained his inability to produce any medical record stating that he was unable to do so since he took treatment from private ayurvedic doctor. No doubt he never reported sick in any of the company's hospitals and never sought for grant of any kind of leave by his superiors. This is certainly a lapse on his part. But the fact remains that Management is not disputing with the correctness of the contention of the workman that during the year 1997 he was sick. Further, in his statement Petitioner has stated that he met with an accident while working in Smg.3 incline and a wooden object fell on his back about 6 years prior to the date of the enquiry, which resulted into his inability to carry basket on his shoulder at KK. 5A incline and that his ill-health got increased and he became very weak. Inspite of making this categorical statement he has not been subjected to any cross examination with this regard. It means the management is not disputing with the correctness of the statement. Further, Management is not actually disputing with the correctness of the contention of the workman that he was unable to attend to his duties owing to his sickness. It can be said so since not even a suggestion is put to him while he was under cross examination during the enquiry that his contention that he was sick is not correct. In the given circumstances it can not be said that there is no sufficient cause for the workman to be absent from duties at the relevant time. Thus, he being absent from duty does not amount to misconduct.

9. But, it is a lapse on the part of the workman in not reporting sick and not seeking for permission/grant of leave while remaining absent from duties. This certainly resulted into prejudice to the Management since, there would be disruption in the schedule of work due to the workman remaining absent from duty without giving prior information to concerned authorities. But, as already discussed above as there is sufficient cause for the workman to remain absent from duties, his absenteeism as mentioned in the chargesheet does not amount to misconduct as contemplated under the Respondent company's Standing Orders 25.25.

10. It is the contention of the Respondents that it is the habit of the workman to unauthorizedly absent from duties as the Respondent company was compelled to disempanel him once while he was working as badli filler as he was not regular to his duties and he was empanelled again considering his representation and assurance that he would be regular to his duties. But, the fact remains that as far as the present circumstance is concerned there is sufficient reason for the workman to be absent from his duties. Therefore, it can not be said that his conduct in absenting himself from duties during chargesheeted period strictly comes under the purview of the Respondent company's Standing Orders No. 25.25.

11. But, as rightly pointed out for the Respondent the workman remaining absent from duty without seeking for any leave/permission certainly would have resulted into substantial inconvenience and hardship to the Respondent company due to disturbance in the schedule of the work. This lapse on the part of the workman certainly warrants punishment. But, removal from service is not appropriate punishment for the said lapse, as it is grossly disproportionate.

12. In view of the fore gone discussion, it can safely be held that the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of the workman with effect from 9.10.1998 is neither legal nor justified.

This point is answered accordingly.

13. Point No. II :

In view of the finding given while answering Point No.I above, the order of termination of services of the workman with effect from 9.10.1998 passed by the Management of the Respondent company is liable to be set aside. Consequently, he is directed to be reinstated into service as badli filler with effect from 9.10.1998.

14. But, as discussed while deciding Point No.I above, for the lapse of not reporting sick and not seeking for permission/leave while remaining absent from duty on the part of the workman warrants appropriate punishment. To discourage the workman to repeat such conduct in future and also considering the past conduct of the workman which lead to his disempanellment, stoppage of atleast

one annual grade increment with cumulative effect is appropriate punishment. Further, the workman is not entitled for any back wages. But he is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of the workman Sri Madoti Raju, the workman with effect from 9.10.1998 is hereby held as neither legal nor justified and the same is hereby set aside. The Workman shall be reinstated into service as badli filler forthwith, with effect from 9.10.1998. He is awarded with the punishment of stoppage of one annual grade increment with cumulative effect. He is not entitled for any back wages, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 16th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2136.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 81/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/14/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2136.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/14/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 19th day of June, 2014

INDUSTRIAL DISPUTE No. 81/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. M.V. Hanumantha Rao & K. Seetharama Rao, Advocates

AWARD

By virtue of reference No. L-22012/14/2006-IR (CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute.

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Dasari Srinivas with effect from 28.2.2000 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.81/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Workman and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. M.V. Hanumantha Rao & K. Seetharama Rao, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Dasari Srinivas (who will hereinafter be referred as workman) has been appointed in the service of the

Respondent company as badli filler on 17.5.1997. During the year 1998, while he was working at SMG-3 Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 20.2.1999 was issued alleging that during the year 1998 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Workman was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Workman from service vide office order dated 20.2.2000. The procedure of the enquiry was not explained to the Workman though Workman is an illiterate. Thus, Workman could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Workman which caused prejudice to the Workman. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Workman. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Workman categorically pleaded that his inability to perform the duties during the year 1998, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Workman and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Workman is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Workman is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 17.5.1997 as badli filler. He was an underground employee and was expected to put in 190 musters per calendar year. The workman was working at SMG.3 Incline of Mandamarri Area. During the calendar year 1998 Workman put in only 58 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman submitted his written explanation which was found not satisfactory. Since the workman remained absent continuously, the notice of enquiry was published in Telugu daily Andhra Jyothi dated 2.9.1999 advising him to attend for an enquiry on 10.9.1999. But he did not attend the enquiry. Hence, the Enquiry Officer was left with no option than to hold ex-parte proceedings on 10.9.1999. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. Copy of the enquiry proceeding and enquiry report were served to the workman and also published a notice in Telugu daily Vaartha dated 15.1.2000 advising the workman to approach the office the General Manager, Mandamarri Area to collect the copy of the enquiry proceeding and enquiry report to submit his representation if any against the findings of the Enquiry Officer. But he did not respond. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in 80 musters in 1997, 52 musters in 1998, 2 musters in 1999 and nil musters upto 28.2.2000. The contention of the Workman that the ex-parte enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Workman and the same are received and considered.

6. **The points arise for determination are:**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Dasari Srinivas w.e.f. 28.2.2000 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

As can be gathered from the claim statement filed for the Petitioner he is not disputing with the correctness of the contentions of the Respondent and the imputations in the chargesheet levelled against him that he has been absent from duties without obtaining any kind of leave/ permission during the chargesheeted period. Thus, it amounts to unauthorized absence from duty. no doubt, as per Respondent company's Standing Orders 25.25 which reads as under:

> "Habitual late attendance or habitual absence from duty without sufficient cause".

Mere absence from duty without any kind of leave/ permission by itself will not be a misconduct. Such absence from duty must be without sufficient cause/ reason to become misconduct. It is the contention of the Petitioner that there is sufficient reason for him to be absent from duties i.e., that he was sick at the relevant time. But as can be gathered from the material on record he never pleaded any such sickness and never substantiated the same during the Departmental enquiry.

8. The material on record reveals that when the Departmental enquiry was ordered and an Enquiry Officer was appointed by the Disciplinary Authority to go into the allegations in the chargesheet laid against the workman and to submit a report, the Enquiry Officer has made every possible effort to serve notice of the enquiry on the workman personally, but in vain. There on, he was constrained to get the notice published in 'Andhra Jyothi' daily. Inspite of it, workman did not attend the enquiry. In the circumstances the Departmental enquiry was constrained to be conducted ex-parte. After examination of the Management witnesses by the Presenting Officer and all the documents relied upon by the Management were placed before the Enquiry Officer and on due consideration of the entire evidence the Enquiry Officer has submitted his report finding the workman guilty of the charges levelled against him. The record further reveals that the Disciplinary Authority has gone through the said report and made an effort to serve copy of the enquiry proceeding and the report on the workman vide letter dated 17.11.1999 to enable him to make his written representation if any against the findings of the enquiry officer. But, the same could not be served on the Petitioner personally as he was not available. Thereon the Management got published a notice in Telugu daily 'Vaartha' on 15.1.2001 calling for the workman to approach the office of the General Manager, Mandamarri area to collect copy of enquiry proceedings and report and to submit his representation if any against the findings of the Enquiry Officer. But, this action on the part of the Management also was in vain since the workman has not chosen to collect the enquiry proceedings and report. He never filed any written representation. In the given circumstances, and considering the enquiry proceedings and the findings in the report of the Enquiry Officer the Disciplinary Authority proceeded with issuing the impugned order imposing punishment of disposal of the workman from service.

9. Thus, it is very much clear that on his volition the workman has chosen not to participate in the Departmental enquiry and not to say anything about the enquiry proceedings and findings before the Disciplinary Authority. Therefore, now he is not in a position to say anything against the said proceedings. But surprisingly in his claim statement Petitioner has chosen to make several allegations against the enquiry proceedings. As can be gathered from the said claim statement the Petitioner has expressed grievance that conducting the enquiry proceedings in English language which is not known to the workman resulted into prejudice to him. It is also stated that signatures of the workman were obtained without even explaining the contents of the enquiry proceedings in Telugu and that believing the Respondents the workman has appended his signatures. This is all a deliberate false claim made by the Petitioner. It can be said so since, the workman never attended the enquiry at all and in such case question of Respondents obtaining his signatures on the enquiry proceedings never arose.

10. Further more, in his claim statement Petitioner claimed that the Enquiry Officer has not provided any opportunity to the workman either to cross examine the Management witnesses or to produce defence evidence after completion of the evidence of Management witnesses. When the workman never attended the enquiry inspite of the Enquiry Officer making every effort to serve notice of enquiry on him and finally gave a notice by way of publication in daily news paper which got wide publicity, making allegation of this nature is certainly unwarranted.

11. As can be gathered from the material on record the workman never made any representation to the Disciplinary Authority and never placed any defence before the Enquiry Officer. Inspite of it, it is stated in the claim statement that during the enquiry the workman categorically pleaded that during the year 1998 he was under treatment on account of his recurrent sickness. This is certainly a false plea. It can be said so since he never participated in the enquiry at all and thus, question of his making of any defence never arose.

12. The above discussed material on record clearly shows that Petitioner never approached this forum with clean hands. Not even knowing the true state of affairs in connection with the case of the workman herein i.e., Sri Dasari Srinivas, Petitioner union filed the claim statement in a mechanical manner. Thus, the claim herein is not sustainable. The impugned order is not liable to be interfered with in any manner.

This point is answered accordingly.

13. Point No. II :

In view of the finding given in Point No.I, the workman is not entitled for any of the reliefs sought for in the claim statement.

This point is answered accordingly.

Result :

In the result, reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Dasari Srinivas with effect from 28.2.2000 is legal and justified and thus, the said workman is not entitled for any relief.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 19th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2137.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय हैदराबाद के पंचाट (संदर्भ संख्या 82/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/15/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2137.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/15/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 4th day of June, 2014

INDUSTRIAL DISPUTE No. 82/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. M.V. Hanumantha Rao & K. Seetharama Rao, Advocates

AWARD

By virtue of reference No. L-22012/15/2006-IR (CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute.

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Baneni Suryanarayana with effect from 27.9.2002 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.82/2006 on the file of this Tribunal and notices were served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. M.V. Hanumantha Rao & K. Seetarama Rao, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Baneni Suryanarayana (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 9.11.1986 and later on he was confirmed as Coal Filler on 30.9.1989.

During the year 2001, while he was working at RK-1A Incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 7.2.2002 was issued alleging that during the year 2001 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 24.9.2002. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 2001, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 9.11.1986 as badli filler and was regularised as coal filler w.e.f. 30.09.1989. The workman was working at RK-1A Incline of Mandamarri Area. During the calendar year 2001 Workman put in only 100 musters as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". On receipt of the chargesheet the workman did not submit his written explanation. Thereafter the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The workman had put in the following musters from the year 1997 to 2002:-

YEAR	ACTUAL ATTENDANCE
1997	159 days
1998	121 days
1999	142 days
2000	110 days
2001	100 days
2002	036 days

The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments

are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are :**

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Baneni Suryanarayana w.e.f. 27.9.2002 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Petitioner has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent plea that due to his sickness and also family problems he could not attend to the duties. He stated while making his statement during the Departmental enquiry that for his ill-health he took treatment from private hospitals. No doubt, he did not produce any medical record. But he has not been subjected to any cross examination for the management, regarding his claim that he was sick during relevant time, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Petitioner with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Petitioner from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Petitioner has put in long service of 12 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Petitioner during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Petitioner has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the foregone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management i.e. M/s. Singareni Collieries Company Limited in terminating the services of Shri Baneni Suryanarana w.e.f. 27.9.2002 vide order dated 24.9.2002 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No. II :

No doubt, as per the finding given in Point No.I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Petitioner for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the foregone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No. RKP/PER/R/008/5373 dated 24.9.2002 as illegal and arbitrary and setting aside the same. Instead Petitioner shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Baneni Suryanarayana vide order dated 24.9.2002 with effect from 27.9.2002 is declared as neither legal nor justified and is hereby set aside. The Petitioner shall be reinstated into service as Coal filler forthwith, with effect from 27.9.2002. He is awarded with the punishment of stoppage of one annual increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 4th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 जुलाई, 2014

का.आ. 2138.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 83/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 21/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/16/2006-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 21st July, 2014

S.O. 2138.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 21/07/2014.

[No. L-22012/16/2006-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30th day of May, 2014

INDUSTRIAL DISPUTE No. 83/2006

Between :

The General Secretary,
(Sri Bandari Satyanarayana)
Singareni Collieries Employees Council,
H. No. 18-3-90/3, Ganesh Nagar,
Markandeya Colony,
Karimnagar District,
Godavarikhani -505209 .....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231 ....Respondent

Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. M.V. Hanumantha Rao & K. Seetharama Rao, Advocates

AWARD

By virtue of reference No. L-22012/16/2006-IR(CM-II) dated 23.10.2006 Government of India, Ministry of Labour and Employment, required this Tribunal to adjudicate the dispute,

> "Whether the action of the Management of M/s. Singareni Collieries Company Limited, in terminating the services of Sri Sandra Rajam with effect from 16.4.1998 is legal and justified? If not, to what relief is the workman entitled?"

On receipt of the reference, it was numbered as ID No.83/2006 on the file of this Tribunal and notices were

served on the parties concerned. Both the Petitioner and Respondent appeared before the Tribunal and engaged their respective counsels with the leave of each other and the Tribunal. M/s. A. Sarojana & K. Vasudeva Reddy, Advocates appeared on behalf of the Petitioner union and M/s. M.V. Hanumantha Rao & K. Seetharama Rao, Advocates appeared on behalf of the Respondent.

2. The Petitioner filed his claim statement with the averments in brief as follows:

Sri Sandra Rajam (who will hereinafter be referred as workman) has been appointed in the service of the Respondent company as badli filler on 31.10.1982 and later on he was confirmed as Coal Filler on 1.1.1987. During the year 1996, while he was working at RK-1A incline, he became sick and was under treatment and faced other family problems, due to which the workman could not be regular to his duties. Treating his sickness as absenteeism, a chargesheet dated 5.12.1997 was issued alleging that during the year 1996 workman was habitually absent without sufficient cause and that it amounts to misconduct under company's Standing Orders No.25.25. Thereafter a routine and mechanical enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer and other authorities of the Respondent organization proceeded with a preconceived notion as if the workman has committed misconduct and Enquiry Officer has submitted his report holding the charges as proved, basing on which the impugned proceeding was issued dismissing the Petitioner from service vide office order dated 16.4.1998. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. Workman was given opportunity neither to cross examine the management witnesses nor to produce his defence witness. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties during the year 1996, was only on account of his sickness and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner and followed the perverse findings of the Enquiry Officer, resulting in issuance of impugned order of removal from service. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. Respondent filed his counter with the averments in brief as follows:

The workman was initially appointed in the Respondent's company on 31.10.1982 as badli filler and was regularised as coal filler. The workman was working at RK.1A incline. During the calendar year 1996, Workman absented to duties for 234 days, as such the chargesheet was issued under Standing No.25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". Workman acknowledged the receipt of the chargesheet but did not submit his explanation to the chargesheet. Thereafter the enquiry was conducted. Workman fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry, the Enquiry Officer explained the procedure of the enquiry in Telugu to the Workman. Workman did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Workman in Telugu, the language to which Workman is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Workman did not prefer to cross examine the Management witnesses. He did not submit any documents in support of his statement. Basing on the evidence made available the Enquiry Officer found the Workman guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Workman is fully aware of the same but he has not availed the facilities. The contention of the Workman that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Workman were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. As the workman was not attending to duties, the copy of enquiry report and enquiry proceedings was sent to his last known address which was returned undelivered. Hence, a notice advising the workman to approach the Respondent to collect the copy of enquiry report and submit his representation, if any against the findings of the enquiry report, was published in Telugu daily Andhra Jyothi dated 2.4.1998. But he did not respond to the notice. Workman did not produce any documents to substantiate his sickness. The punishment imposed is not disproportionate to the charges levelled. Due to unauthorized absenteeism the planned schedules of work as well as the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the

unauthorised absentees like the Workman. Hence, the claim petition is liable to be dismissed.

4. Learned counsel for the Workman filed a memo stating that Workman is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 16.12.13 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. The points arise for determination are:

I. Whether the action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Sri Sandra Rajam w.e.f. 16.4.1998 is legal and justified?

II. If not, to what relief the Workman is entitled for?

7. Point No. I :

It is an admitted fact that the Petitioner has been absent from duty unauthorizedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent plea that due to his ill-health he could not attend to the duties. He stated while making his statement during the Departmental enquiry that for his ill-health and nervous weakness, he took treatment from private hospitals. No doubt, he did not produce any medical record. But, the Petitioner elaborated his ill-health as suffering from nervous weakness stating that due to the same he became unable to attend to the duty during the chargesheeted period. Inspite of it he has not been subjected to any cross examination for the management, which means management has not chosen to contradict or dispute with the correctness of the contentions of the Petitioner with this regard. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Petitioner from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Petitioner has put in long service of 16 years in the Respondent organization and only due to the above referred cause he became irregular during the chargesheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Petitioner during the previous years to the chargesheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case, as already discussed above, there is no proven previous misconduct. The allegation regarding putting in less musters during the period prior to the chargesheeted period is in the status of mere allegation only for the reason that Petitioner has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management ie M/s. Singareni Collieries Company Limited in terminating the services of Shri Sandra Rajam w.e.f. 16.4.1998 is held as neither legal nor justified.

This point is answered accordingly.

12. Point No. II :

No doubt, as per the finding given in Point No.I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Petitioner for the lapse of not informing his superiors regarding his sickness and not taking permission to remain absent from duty.

14. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No.P/RKP/16/98/1040 dated 16.4.1998 as illegal and arbitrary and setting aside the same. Instead Petitioner shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, the reference is answered as follows:

The action of the Management of M/s. Singareni Collieries Company Limited in terminating the services of Shri Sandra Rajam w.e.f. 16.4.1998 is declared as neither legal nor justified and is hereby set aside. The Petitioner shall be reinstated into service as Coal filler forthwith, with effect from 16.4.1998. He is awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 30th day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner : NIL

Witnesses examined for the Respondent : NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2139.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

तिरूवनंततपुरम जिला के नेय्याटिनकरा तालूक में मरूकिल

[सं. एस-38013/55/2014-एस.एस. I]

अजय मलिक, अवर सचिव

New Delhi, the 24th July, 2014

S.O. 2139.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Kerala namely :—

Revenue village of Marukil in Neyyattinkara Taluk, Thiruvananthapuram Dist.

[No. S-38013/55/2014-SS.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2140.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

केन्द्र	कोयम्बतूर जिला के सूलूर तालुक में
कोयम्बतूर व तिरूप्पूर जिला सूलूर एवं पल्लडम तालुक सुल्तानपेट क्षेत्र	1. सुल्तानपेट 2. वडम्पचेरी 3. वरपट्टी 4. पुलियम्पट्टी तिरूप्पूर जिला के पल्लडम तालुक में 5. सेलक्करचल

	6. कमनायकेन्पालयम के अंतर्गत आने वाले राजस्व गाँव

[सं. एस-38013/54/2014-एस.एस. 1]

अजय मलिक, अवर सचिव

New Delhi, the 24th July, 2014

S.O. 2140.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamil-Nadu namely :—

Centre	Areas comprising the revenue villages of
Sultanpet area Sulur & Palladam Taluk Coimbatore & Tirupur District	1. Sultanpet 2. Vadampacheri 3. Varapatti 4. Puliampatti In Sulur Taluk, Coimbatore District 5. Selakkarachal 6. Kamanaickenpalayam In Paladam Taluk Tirupur District

[No. S-38013/54/2014-SS.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2141.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप-धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

कोल्लम जिला के पुनलूर तालुक में तिंकलकारिक्कम

[सं. एस-38013/51/2014-एस.एस. I]

अजय मलिक, अवर सचिव

New Delhi, the 24th July, 2014

S.O. 2141.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Kerala namely: -

Revenue village of Thinkalkarikkom in Punalur Taluk, Kollam Dist.

[No. S-38013/51/2014-SS.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2142.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय असनसोल के पंचाट (संदर्भ संख्या 44/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/309/2003-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th July, 2014

S.O. 2142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Chora Colliery, Kenda Area of M/s. E.C.L., and their workmen, received by the Central Government on 24/07/2014.

[No. L-22012/309/2003-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANYAPUR, PO:- R.K. MISSION, ASANSOL, DIST.-BURDWAN, PIN-713305, (W.B.)

PRESENT : Sri PRAMOD KUMAR MISHRA, Presiding Officer

REFERENCE NO. 44 OF 2004

PARTIES : The management of Chora Colliery, Kenda Area, ECL.

Vs.

Sri Pannalal Bouri

REPRESENTATIVES :

For the management : Shri P. K. Das, Ld. Advocate

For the union (Workman) : Shri Rakesh Kumar, General Secretary, KMC

Industry : Coal State : West Bengal

Dated – 25.06.2014

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter NO. L-22012/309/2003-IR(CM-II) dated 30.06.2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Chora Colliery under Kenda Area of M/s. Eastern Coalfields Limited in dismissing Sri Pannalal Bouri, Timber Mazdoor form service w.e.f. 14.6.1994 is legal and justified? If not, to what relief is the workman entitled?"

Having received the Order NO. L-22012/309/2003-IR(CM-II) dated 30.06.2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 44 of 2004 was registered on 12.07.2004 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record I find that the case is remarked as "No Dispute Award" passed by my predecessor as the workman has already superannuated from service. Having heard both the parties and on their prayer I came to the conclusion that the case may be closed and a "No Dispute Award" may be passed as the workman has already been superannuated and no dispute exists between the parties. Hence the case is closed and accordingly it is hereby ordered:

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय असनसोल के पंचाट (संदर्भ संख्या 74/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/346/1998-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th July, 2014

S.O. 2143.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Adhabpur Colliery, Kajora Area of M/s. E.C.L., and their workmen, received by the Central Government on 24/07/2014.

[No. L-22012/346/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri PRAMOD KUMAR MISHRA, Presiding Officer

REFERENCE NO. 74 OF 1999

PARTIES : The management of Madhabpur Colliery, Kajora Area, ECL.

Vs.

Sri Paresh Nath Mondal

REPRESENTATIVES :

For the management : Shri P.K. Das, Ld. Advocate

For the union (Workman) : Sri. S.K. Pandey, General Secretary of Colliery Mazdoor Congress (HMS)

Industry : Coal State : West Bengal

Dated – 24.06.2014

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter NO. L-22012/346/98/IR (CM-II) dated 07.07.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Madhabpur Colliery under Kajora Area of M/s. ECL in not regularising Sh. Paresh Nath Mondal, Gen. Mazdoor, Cat.I as Magazine Clerk w.e.f. 10.09.92 is legal and justified? If not, to what relief is the workman entitled?"

Having received the Order NO. L-22012/346/98/IR (CM-II) dated 07.07.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 74 of 1999 was registered on 23.07.1999 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list

of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record I find that the case is remarked as "No Dispute Award" passed by my predecessor as the workman has already superannuated from service. Having heard both the parties and on their prayer I came to the conclusion that the case may be closed and a "No Dispute Award" may be passed as the workman has already been superannuated and no dispute exists between the parties. Hence the case is closed and accordingly it is hereby ordered:

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2144.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 52/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/325/2004-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th July, 2014

S.O. 2144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 24/07/2014

[No. L-22012/325/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANYAPUR, PO:- R.K.MISSION, ASANSOL, DIST.-BURDWAN, PIN-713305, (W.B.)

PRESENT : Sri PRAMOD KUMAR MISHRA, Presiding Officer

REFERENCE NO. 52 OF 2005

PARTIES : The management of Nimcha Colliery, Satgram Area, ECL.

Vs.

Sri Ganesh Bhuiya

REPRESENTATIVES :

For the management : Shri P. K. Goswami, Ld. Advocate

For the union (Workman): Shri Rakesh Kumar, General Secretary, KMC

Industry : Coal State : West Bengal

Dated – 25.06.2014

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/325/2004-IR(CM-II) dated 21.07.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited in dismissing Sh. Ganesh Bhuiya, U.G. Loader form service w.e.f. 05.12.2003 is legal and justified? If not, to what relief Sh. Ganesh Bhuiya is entitled?"

Having received the Order NO. L-22012/325/2004-IR(CM-II) dated 21.07.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 52 of 2005 was registered on 17.08.2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record I find that the case is remarked as "No Dispute Award" passed by my predecessor as the workman has already superannuated from service. Having heard both the parties and on their prayer I came to the conclusion that the case may be closed and a "No Dispute Award" may be passed as the workman has already been superannuated and no dispute exists between the parties. Hence the case is closed and accordingly it is hereby ordered:

ORDER

Let an "Award" be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2145.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ.सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 5/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/07/2014 को प्राप्त हुआ था।

[सं. एल-22011/31/2009-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th July, 2014

S.O. 2145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 24/07/2014.

[No. L-22011/31/2009-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 05/2010

Ref. No. L-22011/31/2009 – IR(CM-II) dated: 25.03.2010

BETWEEN

Sri Ram Pal, Labour Mate
556/8, IIIrd lane
Sujanpura, Alambagh
Lucknow

AND

1. The General Manager (UP)
   Food Corporation of India,
   TC/3V, Vibhuti Khand
   Gomti Nagar
   Lucknow
2. The Executive Director (North)
   Food Corporation of India
   Plot No. 2A, 2B
   Sector 24, Gautam Bugh Nagar
   Noida (UP)
3. The Managing Director
   Food Corporation of India
   16-20, Barakhamba Lane
   New Delhi – 110001
4. The Area Manager
   Food Corporation of India
   Shajahanpur

AWARD

1. By order No. L-22011/31/2009 – IR(CM-II) dated: 25.03.2010 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Ram Pal, Labour Mate, 556/8, IIIrd lane, Sujanpura, Alambagh, Lucknow and the General Manager (UP), Food Corporation of India, TC/3V, Vibhuti Khand, Gomti Nagar, Lucknow & the Executive Director (North), Food Corporation of India, Plot No. 2A, 2B, Sector 24, Gautam Bugh Nagar, Noida (UP) & the Managing Director, Food Corporation of India, 16-20, Barakhamba Lane, New Delhi & the Area Manager, Food Corporation of India, Shajahanpur for adjudication.

2. The reference under adjudication is:

"(I) WHETHER THE DEMAND OF SHRI RAM PAL & 249 OTHERS (AS PER LIST ENCLOSED) FOR DECLARING THEM AS DEPARTMENTAL WORKERS OF THE MANAGEMENT OF FCI IS LEGAL AND JUSTIFIED? TO WHAT RELIEF ARE THE WORKMEN ENTITLED FOR?

(II) WHETHER THE DEMAND OF SHRI RAM PAL & 249 OTHERS (AS PER LIST ENCLOSED) FOR PAYMENT OF MINIMUM GUARANTEED WAGES FROM 01.01.1994 TO 20.11.2008 AND FOR BONUS FROM 1975-76 TO 2007-08 ARE LEGAL AND JUSTIFIED? TO WHAT RELIEF ARE THE CLAIMANT WORKMEN ENTITLED TO?

(III) WHETHER THE DEMAND OF SHRI RAM PAL & 249 OTHERS (AS PER LIST ENCLOSED) FOR PAYMENT OF RS. 50/- PER MONTH INTERIM RELIEF IN ACCORDANCE WITH NIT AWARD IS LEGAL AND JUSTIFIED? TO WHAT RELIEF ARE THE CLAIMANT WORKMEN ENTITLED?"

2. The case of the workmen, in brief, is that the workmen, Ram Pal & 249 others are employees of the Food Corporation of India, working for more than 20 years. It is submitted by the workmen that the management by the means of letter dated 06.02.75 introduced the direct payment system in 8 depots, including Shahjahanpur, and the opposite party No. 4 was directed to pay bonus to the labours of the depot for the year 1973-74 onwards; but the management failed to do so. In this regard is it specifically submitted that the management has not paid bonus for 1973-74 to 2007-08. It is further submitted that the opposite party vide circular dated 26.02.2008 agreed upon to pay minimum wages to the laboures from 01.01.94 but failed to pay the same to any of the workmen. It is also alleged by the workmen that the management is paying interim relief of Rs. 50/- per day to the workmen w.ef. 01.12.2003 as allowed by Hon'ble National Industrial Tribunal Mumbai. The workmen has also stated that since they are working

for more than 20 years they are entitled for regularization and to be declared as departmental labours. Accordingly, the workmen have prayed that the management of FCI be directed to declare the workmen as departmental workers of FCI and pay them minimum guaranteed wages from 01.01.94 to 30.11.2008 and make them payment of interim relief of Rs. 50/- per day as well as make payment of bonus from 1975-76 to 2007-2008 along with interest @ 18 % from the date it was due.

3. The management of the Food Corporation of India has disputed the claim of the workmen and stated that direct payment system has never been implemented as FSD, Rouserkothi depot and contract labour system is prevalent at Rourserkothi depot since its inception. In this regard it has been specifically submitted that Government of India has issued a notification of selected depots on 23.04.2010 in which name of FSD, Rouserkothi was not included. It is also submitted by the management of FCI that the workmen are not their employees rather they are engaged by some contractor, therefore they cannot raise any dispute against the FCI as the Food Corporation of India is not the employer of contract labours. The management has also raised objection against the manner of representation of the workmen by an unregistered union. Accordingly, the management of FCI has prayed that the claim of the workmen be rejected being devoid of any merit.

4. The workmen have filed its rejoinder wherein it has submitted that an unregistered union too can raise industrial dispute. It is also submitted that the services of the workmen of Shahjahanpur were utilized at Rouser Kothi and Roza and Railhead as and when needed. Labours of the depot were sent for the purpose of loading and unloading when needed. Hence, the applicants are the employee of FCI, Shahjahanpur and not any contractor.

5. The parties have filed photocopy of documentary evidence in support of their respective claim. The workmen have filed evidence of Pati Ram S/o Late Anokhe Lal, Yashim Khan, Pati Ram S/o Late Sarju and Ram Pal whereas the management has filed evidence of Shri Malik Rehan Pasha, Area Manager in support of their case. The parties cross-examined the witnesses of each other and argued their case.

6. Heard authorized representatives of the parties and perused entire evidence available on record.

7. The case of the workmen is that they are working with the management of FCI for more than 20 years and the management is treating them as contractual workmen and making payment accordingly. It is also the case of the workman that the contract labour system has been abolished by the Government of India vide notification dated 23.04.2010, prohibiting works of loading, unloading, stacking, destacking, restacking, standardization, weitghment, sweeping and cleaning in the godowns and depots of the FCI. The name of Shahjahanpur Roza Depot finds its reference in the schedule attached to it. It is also submitted by the workmen's representative that direct payment system had already been introduced in many depots of FCI, including Shahjahanpur depot of U.P. Region vide letter dated 06.02.75, therefore, after abolition of contract labour system the labourers may be deemed to be the employees of the FCI and may be paid at least minimum wages, bonus and other benefits.

8. In rebuttal, the management has contended that the applicants are contractor's worker and they are not the employee of the FCI. Moreover, it is also argued that the notification dated 23.04.2010, prohibiting contract labour practice in Shahjahanpur Depot, has been challenged before Hon'ble High Court and the writ is pending, therefore, the statement of claim has no merit. Further, it has also been contended by the management that the Direct payment system is not applicable in Rosa Depot, where the workmen discharge their duties.

9. I have given my thoughtful consideration to the rival contentions of the parties.

10. The management of the FCI has come forward with the contention that the applicants under dispute are not their workmen rather they are workmen of the contracting agency and in this regard they have filed copy of license issued to various Contractors, viz. Vikas Agarwal dated 06.05.2010 for doing work of Handling and Transporting in establishment of Area Manager, FCI, Shahjanpur; and to M/s Gupta Forwarding Agency dated 05.1.2012 for doing work of loading and unloading of food grains in Rausarkothi FSD; and to M/s Gupta Forwarding Agency dated 02.11.2010 for doing work of loading and unloading of food grains in Rausarkothi Depot. In rebuttal, the workmen's case is that the practice of contract labour has been abolished in FCI depot vide notification dated 23.04.2010 and the name of Shahjahanpur depot finds its reference at serial No. 01, therefore, all the workmen alleged to be the workers of the Contactor be treated/deemded to be workmen of FCI. Though the management has contended that the said notification dated 23.04.2010, abolishing contract labour system has been challenged in a Writ Petition. Here it is necessary to mention that there is no order, on the record, staying the above notification dated 23.04.2010; neither is there any stay order by the Hon'ble High Court on the proceedings before this Tribunal. It is also noteworthy to mention that the notification dated 23.04.2010 has been issued by the Competent Government with in wake of the powers conferred upon it vide Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1970 and the above provision of the Act has not been declared void or ultra virus by the Hon'ble Apex Court, therefore, the notification issued in pursuance to the provision contained in the Act prevails good.

Hon'ble Apex Court in Air India's case (1997 AIR SCW 430) has observed as under:

> "In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant."

Therefore, in view of the facts and circumstances of the case it is apparent that the workmen who are serving the FCI, the principal employer, since long through contracting agencies become departmental workmen on abolition of contract labour system in FCI vide notification dated 23.04.2010. Accordingly, on becoming departmental workers of FCI, the workmen become eligible for payment of wages and other benefits at par with other regular workmen of FCI w.e.f. 23.04.2010.

11. As regard payment of minimum guaranteed wages from 01.01.1994 to 20.11.2008 and for bonus from 1975-76 to 2007-2008, it is settled position of law that the Government and its instrumentalities are required to make minimum wages to its employees. In the present case, it is admitted that the workmen were engaged by the FCI to carryout loading and unloading work in its Shajahanpur depot, initially through contractor and on abolition of contract labour system, they become employees of the FCI. Hence, they become entitled for payment of minimum wages from their date of engagement till 22.04.2010 from the contractor and thereafter from 23.04.2010 from the FCI as modified form time to time.

The workmen have also come forward with the demand that they be granted bonus from 1975-76 to 2007-2008; but has not filed any documentary evidence in form of any office memorandum or circular regarding the admissibility of bonus to them. They have also not given their working detail in relevant period of time i.e. from 1975-76 to 2007-2008 either in their pleadings or in their evidence. The workmen who come forward with their oral evidence and faced the cross-examination did not give any details of working neither filed any documentary evidence to prove the length of services claimed by them or basis for entitlement for the adhoc or productivity linked bonus. Hence, in absence of any evidence on this point i.e. regarding entitlement of bonus. Therefore, it is not possible to draw a finding that the workmen are entitled for grant of bonus from 1975-76 to 2007-2008.

12. Lastly, the workmen have also demanded for grant of payment of Rs. 50/- per month interim relief in accordance with NIT Award. In this regard the workmen have filed circular No. 3/2008 dated 26.02.2008 regarding 'revision of the Piece Rate for calculating ASOR% and the Minimum Guaranteed daily wage w.e.f. 01.01.2008 in respect of Direct Payment System (DPS) workers working in the depots'; wherein the revised minimum guaranteed wages paid to the Direct Payment System (DPS) workers has been circulated. The FCI while circulating the revised rates has mentioned regarding the continuance of interim relief of Rs. 50/- as under:

> "In addition to the above, the eligible DPS worker would continue to get the interim relief of Rs. 50/-, as allowed by the National Industrial Tribunal, Mumbai in Reference No. NTB-1/2003 – Food Corporation of India and their workmen."

Thus, it is clear from above provision that the eligible DPS worker would continue to get the interim relief of Rs. 50/- as the award of National Industrial Tribunal, Mumbai and from pleadings of the workmen Direct Payment System (PDS) has been introduced in their depot; therefore, they are entitled for payment of interim relief along with minimum wages from the management of FCI from the date they are held to be the employee of the FCI i.e. 23.04.2010.

13. Hence, my award is as under:

(i) The demand of Shri Ram Pal & 249 others for declaring them as Departmental Workers of the management of FCI is legal and justified; and accordingly, they shall be treated as employees of the FCI on abolition of contract labour system w.e.f. 23.04.2010. Accordingly, the workmen shall be treated as employees of the FCI and shall be entitled for wages and other benefits at par with other regular employees of the FCI.

(ii) The workmen Shri Ram Pal & 249 others shall also be entitled for minimum wages from the date they shall be treated as employees of the FCI; as regards admissibility of bonus from 1975-76 to 2007-08, the same shall be not be payable to the workmen in absence of any proof from workmen.

(iii) Also, the workmen, Shri Ram Pal & 249 others shall be entitled for interim relief of Rs. 50/- per month in accordance with award of National Industrial Tribunal, Mumbai w.e.f. 23.04.2010.

14. The reference is answered accordingly.

Dr. MANJU NIGAM, Presiding Officer

Lucknow

16th July, 2014.

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 43/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/07/2014 को प्राप्त हुआ था।

[सं. एल-22016/106/1996-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th July, 2014

S.O. 2146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coalfieds Limited and their workmen, received by the Central Government on 24/07/2014.

[No. L-22016/106/1996-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/43/97

PRESIDING OFFICER : SHRI R.B.PATLE

Secretary,
Sanyukta Khadan Mazdoor Sangh (AITUC),
Manikpur Colliery,
Post Korba Colliery,
Distt. Bilaspur (MP) ...Workman/Union

Versus

Sub Area Manager,
SECL, Manikpur Colliery,
Post Manikpurcolliery,
Distt. Bilaspur (MP) ...Management

AWARD

(Passed on this 20th day of May, 2014)

1. As per letter dated 24-2-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22016/106/1996-IR(C-II). The dispute under reference relates to:

"Whether the action of the management of M/S SECL Manikpur Colliery, Bilaspur in reducing the Basic Pay of Shri V.K.Verma, fixed on promotion from Drill Operator to clerk Grade III and thereby denying him the benefit of pay protection on promotion is just and legal? If not, to what relief is he entitled?"

2. Present reference is received. Statement of claim is filed by Ist party Union. IInd party filed Written Statement in the matter. The parties arrived at settlement after evidence was partly recorded. The settlement is accepted. In view of settlement, the amount is paid to the widow of deceased workman Shri V.K.Verma. The award is passed in terms of settlement between parties.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 69/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/07/2014 को प्राप्त हुआ था।

[सं. एल-22012/148/1989-डी. 4 (बी)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th July, 2014

S.O. 2147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/89) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Eastern Coalfields Limited and their workmen, received by the Central Government on 24/07/2014.

[No. L-22012/148/1989-D-4(B)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/69/89

PRESIDING OFFICER : SHRI R. B. PATLE

General Secretary,
M.P.K.K.M.P. (HMS),
Post Junnardeo,
Distt. Chhindwara (MP) ...Workman/Union

Versus

Manager,
Rawanwara Khas Colliery, WCL,
Post Dighawani,
Distt. Chhindwara ...Management

AWARD

(Passed on this 17th day of April, 2014)

1. As per letter dated 14-3-89 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/148/1989-D-4(B). The dispute under reference relates to:

> "Whether the action of the management of Rawanwara Khas Colliery of WCL, PO Dighawani via Parasia, Distt. Chhindwara in stopping from duty S/Shri Satyanarayan S/o Behari, Jagdish Prasad S/o Salikram, Shivkumar S/o Motilal, Bhaglal S/o Poonu, Mohammad S/o Ahmed, Sewak S/o Kamal, Kewal S/o Mehtab, Ramdas S/o Mangal, Dhanlal S/o Laxman and Ashok Kumar w.e.f. 1-10-85 and not paying the wages as Tindal Cat-IV as per NCWA is justified? If not, to what relief the workmen concerned are entitled?"

2. After receiving reference, notices were issued to the parties. Ist party Secretary of MPKKMP (HMS) Union submitted statement of claim at Page 3/1 to 3/2. Case of Union is that workmen Satyanarayan S/o Behari, Jagdish Prasad S/o Salikram, Shivkumar S/o Motilal, Bhaglal S/o Poonu, Mohammad S/o Ahmed, Sewak S/o Kamal, Kewal S/o Mehtab, Ramdas S/o Mangal, Dhanlal S/o Laxman and Ashok Kumar were working is Tyndal mazdoors with IINd party Rawanwara Khas colliery from 1974. That they were working for mining jobs. They were directly paid by the management, their attendance was marked daily at Rawanwara, their wages were paid directly by colliery office. It is further pleaded that those workers were transferred place to place for mining jobs. They were under direct control of the Manager who directed Asstt. Store Keeper of Colliery. It is submitted that those workers were sometimes working under fitters of Rawanwara Khas and C.T.Mistry of Pench East colliery for mining jobs. That they were paid as piece rated workman but wages were made in name of one workman then paid by the management on the basis of attendance of each worker and on job done by him. Union further submits that those workers were doing loading unloading work of mine goods, materials from truck, dumpers of the management from store of colliery to Central Main Store Chandametta. That they were not regularized despite of working as tyndal gang of Category IV for 10 years. They put their attendance as required by management but their services were not regularized.

3. It is submitted that the management was disturbed by accident of concerned workman on 13-8-85. One of the co-worker Dhanlal was injured on duty at Pench East colliery while they were unloading diesel drum. Said Dhanlal was admitted in Barkui Hospital of the company in wrong name of his father. All concerned workmen agitated about the action of the management therefore all the workmen were discontinued from 1-10-85. Union submits that the management deprived workman of benefits under NCWA saying that they were the contractor. As per rules under Contract Labour Abolition Act, contractors cannot be engaged for permanent mining job. Workmen were direct responsible to the management. On such grounds, Union prays for reinstatement of those workmen as Tyndal Category IV with back wages.

4. IInd party submitted Written Statement at Page 2/1 to 2/3. Management of IInd party opposed the relief claimed by Union. Management submits that reference is not tenable as their existed no employer employee relationship between parties. employees are not covered as workman defined under I.D.Act, they are not members of the Union. Therefore reference is not tenable. Satnarayan and others were individually employed by the management of Coalfields. They never worked in mines, their names were not entered in form B & E Register. It is further submitted that around 1984, some work for supplying hangers was given to one Shri Jagdish. Work order was for Rs. 5629/- for supply of hangers. For discharging said work, Jagdish had engaged some persons and took work from them of casual nature like digging of holes, loading/unloading of material etc. Those persons were not employed by the management. Rather they were engaged by Shri Jagdish for execution of work ordered to him. The details of working days of those persons are shown in para-5. The claim of Union for payment of wages as Tyndal Category IV is not tenable. IInd party submits that those persons are not entitled to get wages of tyndals as they were never appointed in said category. The reference is mechanically without application of mind. On such ground, IInd party prays for rejection of claim.

5. Union secretary submitted rejoinder at Page 5/3 to 5/5. In its rejoinder, Ist party submitted the reference made by Central Govt. is proper. Workmen are member of the Union. They are also covered as workman under I.D.Act, they are working since 1974. List of working days obtained from colliery office of the respect workmen. They were working under direct control and supervision of management as tyndal Category IV which failed to deprive benefit of NCWA. Their names were not covered in Form B & E Registers. It is denied that Jagdish was issued work order of Rs. 5629/-. It is denied that said Jagdish had engaged those persons for execution of work. Said contention of management is misguiding. The plea that Jagdish was contractor and others are his mazdoors is incorrect. On each and every day, management was

changing names of workman as contractor. On 13-8-85, management indented 1200 litres of Diesel in 6 drums from Sethai colliery to Pench East Colliery in the name of Shiv Kumar. Though the management in its statement agreed to say them its employees, but for short duration. The management shown chart of their attendance for the year 1983 to 85 only. The chart is wrong. It is emphasized that those persons were working as tyndals since 1974, they are entitled to be regularized as tyndals Category IV. The job done by those persons is of permanent nature. After injury suffered in accident by Dhanlal, those persons were discontinued.

6. Management submitted rejoinder at Page 6/1 to 6/2 reiterating its contentions in statement of claim. There is no employer employee relationship. It is denied that those persons were not regularized denying benefits of NCWA.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Rawanwara Khas Colliery of WCL, PO Dighawani via Parasia, Distt. Chhindwara in stopping from duty S/Shri Satyanarayan S/o Behari, Jagdish Prasad S/o Salikram, Shivkumar S/o Motilal, Bhaglal S/o Poonu, Mohammad S/o Ahmed, Sewak S/o Kamal, Kewal S/o Mehtab, Ramdas S/o Mangal, Dhanlal S/o Laxman and Ashok Kumar w.e.f. 1-10-85 and not paying the wages as Tindal Cat-IV as per NCWA is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final orders.

REASONS

8. Union is challenging action of the management in stopping Shri Satyanarayan and others from work and not paying wages of Tyndal Category IV to them. In support of its claim, evidence of Jagdish Prasad, Satyanarayan, Dhanlal is adduced by Union. Jagdish Prasad in his evidence says that 10 persons were working in IInd party. Their wages were paid by the office they were working from 1980 to 1985 with IInd party. They were discontinued from 1985 without assigning reasons. He was working in the stores loading unloading gun powder, carrying the boxes, carrying other goods of the colliery to different places. Their wages were paid obtaining signatures. The entries were taken in the register. Witness Satyanarayan in his evidence says that he was also working with IInd party from 1980 to 1985 at Rawanwara Khas store as tyndal mazdoor. One Kailash was preparing vouchers. Manager Tiwari was making payments. However the payment was made from counter as per work done. Dhanlal witness No.3 also says that he was working with IInd party as Tyndal mazdoor from 1980 to 85. He was doing work of loading diesel drums. He had suffered injury to his leg. He was admitted in Burkui hospital in name of his father-in-law. He was not paid any compensation. The regular work done by regular employees of the colliery, same work was done by him.

9. In cross-examination of Shri Jagdish, he says that he was member of HMS Union, he did not recollect the amount of contribution. He has not produced receipt amount payment of contribution. He was paid wages for the period of actual work. He was engaged by Store Keeper who was acquainted with him. He did not work underground. His name was not called for recruitment. He was not interviewed. Appointment letter was not given to him. For taking leave, he was asking to the store keeper. Application of leave was not submitted by him. His signature was obtained in payment register. His attendance was not marked in the muster roll. Entire cross-examination of Shri Jagdish, there is no suggestion that he was assigned any work on contract basis and he had engaged all those persons.

10. Shri Satyanarayan in his cross-examination says his age was 26 years. When he was engaged, his age was about 17-18 years. He studied till 11th standard. He was member of Union and paid membership amount Rs. 40/-. The Store keeper engaged him. Appointment letter was not given to him. Amount of wages was paid as per work done. Said amount was distributed between them. He had worked from 1980 to 85. He was unable to tell number of working days. Dhanlal in his cross-examination says his age was 28 years. In 1980, his age was about 20-22 years when he was engaged in the mine. Store keeper Deendayal had engaged him on work. He claims ignorance about Employment Exchange Office. His name was not sponsored through said office. The wages were paid by Shri Kailash Babu. Weekly payment was made to him. Name of his father in law was Sadu. He was admitted in hospital in name of his father-in-law. The evidence of all 3 witnesses is not shattered in cross-examination that they were working in store of IInd Party.

11. Evidence of management's witness Shri H.K.Singh is on the point that those workers were not members of the Union. Union has no locus-standi. That those 10 persons were engaged by Shri Jagdish for executing the work awarded to him. The details of working days are given in para-8 of his affidavit during the period 1983 to 1985. That casual nature of work was awarded to petty contractors. The petty contractors were engaging local labours for execution of the work. The quotation Exhibit M-1 to M-13 given to different persons are stated. The vouchers about payment of wages are referred in the Affidavit M-14 to M-68. The witness of the management could not be cross-examined. The written notes of

argument are submitted by IInd party giving details of the pleading in Written Statement and the evidence in cross-examination of the witnesses of the Ist party. It is emphasized that the workman did not work more than 240 days therefore they are entitled to protection under I.D.Act.

12. The evidence of all three witnesses of the union is not shattered that they were working in stores and also doing work of loading unloading and several petty works. Document Exhibit W-1 shows working days of all those 10 persons are shown. Document Exhibit W-2 was application submitted by Dhanlal to the management. The zerox copies of the entries in payment register are produced by IInd party but no pain is taken to get those entries proved by adducing any evidence. The management has also produced documents with list but no evidence is adduced to prove those vouchers. Considering unshattered evidence of witness 1 to 3 of the Union, it is clear that all 10 persons were continuing work with IInd party and doing work of tyndal mazdoor from 1980 to 1-10-1985. The evidence is consistent about their continuous working and during the above period. The record is with the management about their working days and payment of wages. The management failed to produce such record and prove the same. Management has not adduced evidence from record that all those workmen have not completed 240 days preceding their discontinuation from 1-10-1985. Therefore all those workmen are covered under Section 25(B) of I.D.Act. they were discontinued without issuing notice or paying retrenchment compensation, therefore discontinuation from work is in violation of Section 25-F of I.D.Act and as such illegal. For above reasons, I record Point No.1 in Negative.

13. Point No.2- In view of my finding in Point No.1, discontinuation of all those 10 workmen were illegal for violation of section 25-F of I.D.Act, question arises whether workmen are entitled for reinstatement with back wages. The evidence of witness No.1 to 3 for Ist party union is that all those workmen were working during 1980 to 1985 about 5 years, their names were not sponsored through Employment Exchange, no recruitment process was followed for engaging them. They were engaged by Store Keeper because of acquaintance with him. Considering short period of working of those workmen and they were not recruited following procedure, therefore they cannot be reinstated on the work.

14. Learned counsel for IInd party has submitted notes of argument alongwith certain citations. In case of Haryana Urban Development Authority versus Om Pal reported in 2007(5) Supreme Court Cases 742, their Lordship held relief of reinstatement with back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on fact situation obtaining in each case, factors to be considered. Their Lordship considering respondent having worked for a very short period, Labour Court committed a serious illegality in directing reinstatement with full back wages.

The ratio held in case of Sima Dutta versus coal India Ltd and others reported in 2002(3) Bank CLR 327 (Calcutta) is on different point. Hon'ble High Court had directed that workman be given preference over others on basis of experience , if any vacancy is advertised. It was also directed that as she has crossed her age of recruitment during her service, she will be entitled to relaxation in age.

This ratio cannot be applied to present case.

In case of Punjab State Electricity Board versus Presiding Officer, Labour Court and another reported in 1996-I-LLJ 373. His Lordship dealing with Section 25-F and 25(B) held period of 240 days in order to be treated as continuous service for one year is to be counted in a period of 12 months preceding the date of termination.

15. Considering evidence on record and ratio held in Case No.2007(5) Supreme Court Cases 742, all those workmen are not entitled for reinstatement with back wages. Considering the facts, compensation Rs.75,000/- would meet the ends of justice. Accordingly I record my finding at Point No. 2.

16. In the result, award is passed as under:-

(1) The action of the management of Rawanwara Khas Colliery of WCL, PO Dighawani via Parasia, Distt. Chhindwara in stopping from duty S/Shri Satyanarayan S/o Behari, Jagdish Prasad S/o Salikram, Shivkumar S/o Motilal, Bhaglal S/o Poonu, Mohammad S/o Ahmed, Sewak S/o Kamal, Kewal S/o Mehtab, Ramdas S/o Mangal, Dhanlal S/o Laxman and Ashok Kumar w.e.f. 1-10-85 and not paying the wages as Tindal Cat-IV as per NCWA is illegal.

(2) IInd party is directed to pay compensation Rs.75,000 to each of the 10 workmen.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2148.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 69/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/07/2014 को प्राप्त हुआ था।

[सं. एल-42012/15/2002-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th July, 2014

S.O. 2148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of National Metallurgical Laboratory and their workmen, received by the Central Government on 24/07/2014.

[No. L-42012/15/2002-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act,1947.

REFERENCE NO. 69 OF 2002

PARTIES : Shri Lal Mohan Mukhiyar,
Vill : Shankarpur Mahato Toli,
PO: Sarjamda, Singhbhum
(East), Jharkhand

Vs.

Director,
National Metallurgical Laboratory,
Burma Mines, Jamshedpur

Ministry's Order No. L-42012/15/2002-IR (CM-II)

dt. 20.08.2002

APPEARANCES :

On behalf of the Workman/Union	:	Mr. D. Mukherjee, Ld. Advocate
On behalf of the Management	:	Mr. Vinod Kumar, Management Representative

State : Jharkhand Industry : Science & Technology

Dhanbad, Dated, the 12th June, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-42012/15/2002-IR (CM-II) dt. 20.08.2002.

SCHEDULE

"Whether the action of the Management of National Metallurgical Laboratory, Jamshedpur in not regularizing the services of Sri Lal Mohan Mukhiyar is legal and justified? If not, to what relief the concerned workman is entitled to?"

On receipt of the Order No. L-42012/15/2002-IR(CM-II) dt. 20.08.2002 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 69-2002 of was registered on 02.09.2002 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their Representatives and the Joint Legal Adviser appeared in, and contested the case, respectively.

2. The case of the workman Lal Mohan Mukhiyar as per his own written statement is that he had been working in the job of permanent nature against permanent vacancy by putting in 240 days attendance in each calendar year since long. But the Management exploited him and denied his legal facility as per the order showing him as not permanent workman. On his several times representations to the Management for his regularisation,wages and other benefits equal to permanent workman, the management began to harass him in various ways. In course of his employment, he had got the injury in his right hand fingers, for which he had also demanded for compensation, but the management unreasonably terminated him by stopping from his service on 16.02.2001 without complying the mandatory provision of law. Finally, the dispute was raised by the workman himself before the ALC © for his reinstatement and regularization, but due to its failure in conciliation, it has been referred for an adjudication. The action of the Management of the National Metallurgical Laboratory in not regularizing him is vindictive, illegal and anti-labour policy.

The workman in his rejoinder has specifically denied all the allegations of the O.P/Management as false and frivolous.

3. Whereas categorically denying the allegations of the workman, the case of the O.P./Management is that the reference is unmaintainable in law or facts; the National Metallurgical Laboratory (NML), Jamshedpur, is the part and parcel of the Council of Scientific and Industrial Research (CSIR) under the Government of India, Annusdandhan Bhawan, Rafi Marg, New Delhi-1. The Management is an autonomous body and a society registered under the Societies Registration Act as per its Memorandum of Association and its Rules Regularization (Annexure-1 and 2 respectively). The Management directly comes under the Admn. Control of the Ministry of Science and Technology. As per Bye laws, the Prime Minister of

India is the ex-officio President of the Society and the Minister In- charge of Science & Technology is the ex-officio Vice President of the Society. As per the Department of the Commerce of Government of India's Resolution dt. April, 27, 1940 and Feb.1, 1941, a Board of Scientific and Industrial Research and an Industrial Research Utility Committee were constituted. As per the another Resolution dt. Sept., 26, 1962 of the Department of Commerce of Government of India, the Council of Scientific and Industrial Research (CSIR) was constituted as a body for co-ordinations and Administrative Control over the work of the said Organization, in addition to implement a resolution passed by the Legislative Assembly on 14.11.1941 for recommendation to the Governor General-in-Council to constitute the Industrial Research Fund for industrial development in the country. Accordingly as per provision the Fund was allotted Rupees Ten Lacks in the Annual Budget for a period of five years. The overall promotions, guidance and coordination of the Scientific and Industrial Research to special institutions including their existing one for scientific study of problems affecting particular industries and trade, the establishment maintenance and management of Laborarties, Workshops, Institute and Organization to further scientific and industrial researches, their utilization for experiment or otherwise any discovery are the other objects of the councils as per the objects of the Resolution. The council set up a chain of National Laboratories and Research Institutes all over the country in its pursuit make the nation self sufficient in scientific and industrial sphere. Along with other research agencies, these institutions also provide the practical base for implementation of policy decisions at the National Levels. The CSIR which controls all these activities, institutions, laboratories is headed by a Director General. The Council has its Governing body with the Prime Minister as its President. The council undertakes the research through the six types of Institutions: Autonomous Organization as Societies including the O.P. /Management, the Special Depart/Commissions under eminent scientist, Institutions under Ministries including Depart of Science and Technology, Industrial R & D Establishment, Co-operative Research Association with 50% financial support of Government, and Private Institution with facility of tax exemption.

4. The Planning Commission formulates policies and sets the objectives/targets for the purpose of the research also for the O.P./Management. It takes initiatives for promoting research in the specific area by requisitioning the research Institutes including the O.P./Management. The Central Government from time to time appoints committees to review its work and progress, to hold enquiries into the affairs of it, and to report thereon. Upon receipt of such report, the Government of India takes actions and issue directions necessary for concerned matters for furtherance of the object of the institute, the O.P./Management has to comply with such directions under its rules in order to ensure proper functioning. The CSIR is one of the agencies and institutions contemplated under Entry 65 of the Union List in the 7th Schedule to the Constitution of India. The entry relates to union agencies and institutions for professional, vocational or technical training. So, the CSIR cannot be called an "Industry "under Section 2(J) of the Industrial Dispute Act. The National Metallurgical Laboratory, Jamshedpur as a part of the CSIR is a state within the meaning of Art. 12 of the Constitution of India. Only the research work in respect of the Metallurgical minerals is being done in their institution. It is not a Mine, so the reference is not valid and proper, as the Central Government is not the Appropriate Government u/s 2(a) of the I.D. Act, 1947. The Management has to sometime engage workers in exigencies of work in different projects on job contract for a time period till the duration of the six months till the completion of the work, whichever earlier. He had been engaged on various projects from time to time under different spells under different project. Lal Mohan Mukhiyar is an official, but not a workman u/s 2(5) of the I.D. Act. He was not an employee, temporary otherwise, of the Management, as he was engaged only on job contract basis as a technician/ Project Assistant under a sponsored project in NML, Jamshedpur w.e.f. 12.04.1996 for an initial period of six months. He was intermittently again engaged on contract basis for six monthly periods under different projects as per the need. The Job contract at last expired on 25.08.2001. His engagement was purely on job contract as per its term of his service termination on the expiry of the contract period. There was no sanction post, as each project has work as per its necessity. The last contractual engagement of Lal Mohan Mukhiyar started on 26.02.2001 and expired on 25.08.2001, as his engagement was no longer required at the completion of the project. It has been urged for a decision over the preliminary issue on behalf of the employer prior entering into the merit of the case.

The O.P./Management in its rejoinder has categorically denied and responded to all the allegations of the workman.

FINDING WITH REASON

5. In the instant reference, WWI Lal Mohan Mukhiyar, the workman for his own sake, and MWI Dr. Ajoy Kumar Roy, the Scientist Gr. in M.S.T. Division for the O.P./ Management have been examined respectively.

Mr. D. Mukherjee, Learned Counsel for the workman as per his written argument has to submit that workman Lal Mohan Mukhiyar was appointed as a permanent Technician on 12.4.1996 against permanent vacancy, after his interview (Ext.W.1) as also he had got his Identity Card and Certificate (Extt.W. 2 and 3 respectively) so the statement of the workman regarding continuous service

and illegal stoppage remained unchallenged. It is also submitted on his behalf that the evidence and documents as brought on by the MWI establish his (workman) appointment after his interview for the permanent post, there is no document of the agreement filed to show his appointment based on a contract and the termination of his service illegally. To Mr. Mukherjee, the Department is an "Industry" and as per law the workman is a workman as per the I.D. Act as held by the Hon'ble Apex Court (C.B.) in the case of Bangalore Water Supply and Sewage Board Vs. Rajappa, S.C.L.J.Vol 15 at page 121 but the ruling not filed by the Learned Advocate for perusal.

Further the emphatic argument advanced by Mr. Mukherjee, Learned Counsel for the workman is that the 'the confidential circular directing the officer that workman like the appellant should not be engaged continuous but should as far as possible, be offered work on rotation basis and the case that the appellant as a badli worker, have to be characterized as unfair labour practice by the bank as held by the Hon'ble Apex Court in the case of H. D. Singh Vs. Reserve Bank of India, AIR 1986 (SC) 132 and lastly, that the Hon'ble Supreme Court held in the case of workmen employed by Hindustan Lever Ltd. vs Hindustan Lever Ltd. reported in A.I.R. 1984 (SC) 1683 to confirm an employee in acting position in regularization. The later ruling relates to 'failure of the employer to carry out the statutory obligation in terms of the conditions of service would enable the workmen to question his action which will bring into existence a dispute and the expression terms and conditions of employment would on directly include not only the contractual terms and conditions but those terms which are understood and applied by the parties in practice or habitual or by common consent without ever being incorporated in the contract (Para 7 & 11 respectively)'.

Whereas Mr.Vinod Kumar, the Administrative Officer as the Representative for the O.P./Management has to submit that the Management by oral and documentary evidences of MWI Dr. Ajoy Kumar Roy has crystal clearly proved that National Metallurgical Limited, Jamshedpur used to run projects and each project has a different project work as per necessity and the workman concerned was always engaged on contract base job for six months period intermittently (Ext. M. 2 series) and his last contract for Project work started on 22.06.2001 and expired on 28.08.2001, so the engagement of workman was no longer required after the completion of Project. It stands clear that the workman was never engaged in the job of permanent nature; moreover the administration of CSIR is controlled by the Ministry of Science & Technology, so it is an autonomous body registered under the Societies Act. The statement of Lal Mohan Mukhiyar, the workman (WWI), in his cross examination affirms the copy of the offer letter for his engagement dt.15/18.2.2000 (Ext. M-1) as Project Asstt. on job contract basis just as copies of the offer letter to the workman accordingly in the year 1996 to 1999 (Ext. M-2 series). The workman appears to have admitted no paper/documents for his working for more than 240 days in a year. It is evident that the workman never performed the job of the Project Asstt. on contract basis continuously for 240 days during the period 12 calendar months preceding the date with the instant reference as required under Sec. 25 B of I.D. Act. He was out and out a contractual worker .

In view of the aforesaid facts, I find that it is settled principle of law as held in the case of Secy. State of Karnataka Vs. Uma Devi (2006)(3) SCC (L & S)753 that a contractual appointment comes to an end at the end of the contract. An appointment on daily wage or casual basis comes to an end when it discontinued and a temporary appointment comes to an end on the expiry of its term, no employees so appointed, can claim to be made permanent on the expiry of their appointment (Paras 3, 4, 12 & 43). As such, none of the two rulings as relied upon by Mr. Mukherjee, the Counsel for the workman, appears to be applicable to the case under adjudication.

In result it is hereby responded and accordingly awarded in the term of reference that action of the Management of National Metallurgical Laboratory, Jamshedpur, in not regularizing the services of Lal Mohan Mukhiyar is quite legal and justified. Hence, the concerned workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 24 जुलाई, 2014

का.आ. 2149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई. जी. राष्ट. वी. ए. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 25/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/07/2014 को प्राप्त हुआ था।

[सं. एल-42012/157/2004-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th July, 2014

S.O. 2149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Indira Gandhi Rashtriya Van Academy (FRI), and their workmen, received by the Central Government on 24/07/2014.

[No. L-42012/157/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 25/2005

Ref. No. L-42012/157/2004-IR(CM-II) dated: 24.06.2005

BETWEEN

Shri Matambar Singh Bisth,
S/o Shri Prem Singh Bisth,
LIG/11, MDDA Colony,
Ajabpur Kalan,
Dehradun

AND

The Joint Director (Admn.),
Indira Gandhi Rashtriya Van Academy (FRI),
Dehradun

AWARD

1. By order No. L-42012/157/2004-IR(CM-II) dated: 24.06.2005, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Matambar Singh Bisth, S/o Shri Prem Singh Bisth, LIG/11, MDDA Colony, Ajabpur Kalan, Dehradun and the Joint Director (Admn.), Indira Gandhi Rashtriya Van Academi (FRI), Dehradun for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE JOINT DIRECTOR (ADMN) INDIRA GANDHI RASHTRIYA FOREST ACADEMY, DEHRADUN IN TERMINATING THE SERVICES OF SH. MATAMBAR SINGH BISTH S/O SH. PREM SINGH BISTH W.E.F. 06.01.2004 FROM THE POST OF DRIVER IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The case of the workman, Matambar Singh Bisth, in brief, is that he was engaged/appointed as Driver for performing regular and perennial nature of work by the opposite party. It is submitted by the workman that he had been paid salary on monthly basis, initially @ Rs. 71 per day and later @ Rs. 92 per day. The workman has stated that while driving the Academy Bus on 19.06.2002 he met with an accident; whereby a motorcycle collided with the bus causing death of the motorcyclist. Since the bus was not insured, therefore, the Academy had to pay death compensation of Rs. 2,95,875 awarded by the Additional District Judge, Dehradun. It is also submitted that the workman filed an Original Application No. 1530/2003 before CAT, Principal Bench, N. Delhi for regularization of his service. CAT disposed of the above original application vide order dated 18.09.2003; whereby the CAT directed the respondents to consider his regularization in accordance with DoPT's scheme dated 07.06.1988 subject to eligibility and in accordance with law. It is alleged by the workman that the management terminated his services vide order dated 06.01.2004 with immediate effect mentioning his ineligibility and monetary loss that occurred to the Academy due to accident. The workman has submitted that he has worked for more than 05 years continuously with the opposite party and the management terminated his services without any notice or notice pay in contravention to the provisions contained in Section 25 F of the I.D. Act, 1947. Accordingly, it has been prayed by the workman that the order dated 06.01.2004 be set aside and he be reinstated with consequential benefits, including full back wages; and also that his services be regularized.

4. The management of the Indira Gandhi National Forest Academy has filed its written statement wherein it has denied the claim of the workman and has submitted that the workman was neither selected nor appointed as a Driver against any regular and sanctioned post, as per provisions of any rules and Regulations stipulated for rhe regular recruitment; rather he was engaged only as a daily labourer on daily wages basis as per requirement of work. It is also submitted by the management that the workman was not paid any salary; but was paid only for the days he worked with the management at daily wage basis. The management has submitted that the workman caused death of a person due to negligent driving; also, causing pecuniary loss to the Management amounting to Rs. 2,95,875; hence, though his case was considered by the committee as per directions of the CAT for regularization; but he was not found suitable for regularization vide order dated 06.01.2004. As regards termination of the services of the workman, the management has submitted that the workman was engaged as casual labourers as per need, therefore, no termination was at all required as per Rules. The management has also submitted that the Academy is an education and training Institution under the Ministry and Environment and Forests, Government of India, imparting training to the All India Service Officer, especially to Indian Forest Service. Thus, being an educational and training institution, the management of Academy does not fall within the definition of 'industry'. Therefore, the management has prayed that the claim of the workman is liable to be rejected being devoid of merit.

5. The workman has field its rejoinder wherein apart from reiterating the statements already submitted in the statement of claim he has submitted that the Indira Gandhi National Forest Academy comes within the definition of Section 2 (j) of the Act.

6. The parties have filed documentary proof in support of their respective cases. The workman has examined himself whereas the management examined Shri S.K. Awasthi, Additional Professor in support of their respective stands. The parties availed opportunity to cross-examine the each other's witnesses apart from forwarding oral arguments.

7. Heard authorized representatives of the parties and gone through evidence available on record as well as respective pleadings of the parties.

8. The authorized representative of the workman has submitted that the workman had been appointed on the post of Driver on 19.04.1999 and his services has been terminated w.e.f. 06.01.2004 without assigning reason or any notice or notice pay in lieu thereof in violation to the provisions contained in Section 25 F of the I.D. Act, 1947. It is also argued by the workman that the management did not consider his case for regularization, as per directions of the CAT, on contrary has terminated his services without affording him any opportunity of personal hearing or conducting any formal departmental inquiry.

9. In rebuttal, the authorized representative of the management has contended that the workman was never appointed against any sanctioned post; rather he was engaged as casual labourer as and when required; hence there is no question of terminating his services at any point of time or compliance of any of provisions of the Act. It has also argued that the workman's case for regularization, as per directions of the CAT, was considered by the committee so formed for the purpose; but he was not found suitable for regularization and he was well informed of the decision of the committee vide order dated 06.01.2004.

10. I have scanned the entire evidence, in the light of the rival submissions of the parties.

11. The management has come up with the preliminary objection that the opposite party is not an industry within the provisions of I.D. Act, 1947 as it is indulged in imparting education to the Indian Forest Officers of All India Services. In rebuttal, the workman has pleaded that the nature of work discharged by the Academy is similar to the work performed by various universities, prevailing in government as well as private sector. In this regard the workman has relied on verdict of Hon'ble Apex Court in Banglore Water Supply & Sewerage Board etc. vs. A Rajappa & others case; wherein it has been observed that

> "absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector."
>
> Hon'ble Apex Court has further observed that
>
> "Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religions but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise."

The management has come up with the case that the Indira Gandhi Rashtriya Van Academy is an educational and training institute, engaged in imparting education to the Indian Forest Service's officers and it does not qualifies the various tests which may put its activities as an 'Industry'. In rebuttal, the workman has pleaded that the Indira Gandhi Rashtriya Van Academy is an institute which is indulge in activities similar to other training institute and universities, which are well covered within the definition of 'industry' as pronounced by Hon'ble Apex Court in its number of judgments.

The term 'industry' under the Industrial Disputes Act, 1947 has been subjected to various judicial interpretations. The first part of definition of industry defines it from the stand point of the employer and the other from the stand point of employees. The decision of the Apex Court in Banglore Water Supply and Sewerage Board had given a wider coverage to the definition of the term industry. The Court ruled that absence of profit motive or gainful objective is irrelevant to the venture in the public, joint, private or in other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations; with the result, the following would fall within the ambit of 'industry', if they fulfill the triple tests (a) professions; (b) clubs; (c) educational institutions; (d) co-operatives; (e) research institutions; and (f) charitable institutions. The Apex Court also observed that the departments discharging purely sovereign functions or legal functions are not 'industry'.

It is not the case of management that it is indulged in discharging and sovereign function; moreover from the pleadings of the management itself it is evident that it is an educational institute, imparting education, therefore, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that the opposite party management i.e. Indira Gandhi Rashtriya Van Academy qualifies the triple test formulated by the Hon'ble Apex Court; and as is not discharging any sovereign function of the State; and accordingly, I come to the conclusion that the opposite party is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

12. Coming to the merit of the case, admittedly no appointment letter was issued to the workman; but there is ample evidence available on record that the services of the workman have been availed as daily rated/casual driver by the opposite party w.e.f. 19.04.1999. The workman has come up with the case that he worked for above duration

continuously; whereas the management has pleaded that his engagement was with intermittent breaks. Also, the management witness stated that evidence of continuous working of the workman is available in records. In this respect, the workman has field photocopy of muster roll and sanction order for the period from 19.04.1999 to 06.0.2004, furnished to him in response to an RTI application.

13. The workman has alleged that the management did not consider his claim for regularization, in spite of specific directs by the CAT and terminated his services without giving him notice or notice pay or any retrenchment compensation, in violation to the provisions contained in Section 25 F of Industrial Disputes Act, 1947. In this regard the management has relied on order dated 06.01.2004; wherein it has been mentioned that the claim of the workman for regularization has been considered by the committee constituted by the management in view of directions of the CAT. It is specifically mentioned in the order that matter has been considered in terms of DoPT's office memorandum dated 07.06.1988 and the workman was not found fit for regularization keeping in view his negligence while driving the Academy bus on 19.06.2002 which caused an accident and resultantly death of a person. The management also discontinued the services of the workman with effect from issuance of said office order dated 06.01.2004.

In this regard the management has also relied on the order of the ADJ, Dehradun in case No. MAC-164/2002; wherein it has been held by the learned ADJ, Dehradun as under:

> "gaari bus san. U.P. 07H-7259 ke chaalak dwara teji aur laaparvaahi se chalai jaane ke kaaran hui. Yaachi ke ladke ke ghor laaparvahi ke kaaran nahi."

The observation made by the learned ADJ goes to show that the real cause of accident and cause of death of the deceased was 'gross negligence' on the part of the driver of the bus i.e. the workman; therefore the management rightly rejected his claim for regularization as driver keeping in view the negligence shown by the workman in discharge of his duties as driver.

14. In Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai 2005 (107) FLR 1145 (SC) Hon'ble Apex Court came to the conclusion that the workman could be entitled for the protection of Section 25-F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of Section 25-F of the Industrial Disputes Act, 1947. The workman has alleged that the management has terminated his services without complying with the provisions of Section 25 F of the Act i.e. without serving any notice or notice pay or retrenchment compensation. In view of the law laid down by the Hon'ble Apex Court this Tribunal has to see as to whether the workman has worked for 240 days in the twelve calendar months preceding the date of alleged termination.

In this regard, it is admitted fact that the workman worked with the management of the Indira Gandhi Rashtriya Van Academy from 19.04.1999 to 06.01.2004 and he worked for more than 240 days in the twelve calendar months, preceding the date of alleged termination i.e. 06.01.2004 . This fact finds support from the documentary evidence relied upon by the workman as well as the statement of the management witness before this Tribunal, therefore, it was incumbent upon the management to comply with the provisions of Section 25 F of the Industrial Disputes Act, 1947; but the management utterly failed to do so, thus, it is established that the management of Indira Gandhi Rashtriya Van Academy, illegally terminated the services of the workman without complying with the provisions of Section 25 F of the Industrial Disputes Act, 1947.

15. Hence, in view of non-compliance of mandatory provisions of the Section 25 F; now, it is to be considered as to whether the workman is entitled for reinstatement. From the evidence produced by the workman it is not proved that his appointment was as a regular worker. Moreover, from the pleadings of the workman himself it is evident that he was engaged as daily wager and was paid accordingly. Admittedly, the services of the workman were terminated on 06.01.2004. In between Haryana Roadways vs. Rudhan Singh (2005) 5 SCC 591; 2005 SCC (L&S) 716 Hon'ble Apex Court while considering the question regarding award of back wages has observed:

> "There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded …….. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which required to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."

16. In Deepak Ganpat Tari vs. N.E. Theater Pvt. Ltd. 2008 (119) FLR 877 Hon'ble Bombay High Court relying on the Hon'ble Apex Court's judgment in A P V K Brahmandandam 2008 (117) FLR 1086 (SC) Telephone DM vs. Keshab Deb 2008 (118) FLR 376 (SC) JDA vs. Ram Sahai 2006. (111) FLR 1178 (SC), while awarding

compensation of Rs. 1,50,000/- to the concerned workman considering his daily wages as Rs. 45/- in view of the fact that the workman had put in about 3 years of service, has observed as under:

> "It is apparent that termination of services of a daily wager does not amount to retrenchment and for violation of Section 25 F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon'ble Apex Court has hold that in such circumstance employee is entitled to benefit of compensation only."

17. Also, in Jagbir Singh v. Haryana State Agriculture Mktg. Board (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545: Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Others (2010) 2 SSC (L&S) 309 Hon'ble Apex Court has observed as under:

> "However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.
>
> The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded."

18. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service. The ends of justice would meet by paying compensation to the workman instead in place of relief of reinstatement in service.

19. Having regards to these facts that the workman has worked as daily wager only from 19.04.1999 to 06.01.2004 i.e. approximately for four years; and he was getting Rs. 92/- per day at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management is directed to pay lump sum amount of compensation only.

20. Accordingly, the management is directed to pay a sum of Rs. 1,50,000/- (Rupees One Lakh Fifty thousand only) to the workman as compensation for termination of his services in violation of Section 25 F of the I.D. Act. The said amount shall be paid to the workman within 08 weeks of publication of the award, failing which; the same shall carry interest @ 6% per annum.

21. The reference is answered accordingly.

LUCKNOW

6th June, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम एस आई एन जी वैश्य बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 126/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/206/2004-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 126/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. ING Vysya Bank Ltd, and their workmen, received by the Central Government on 02/07/2014.

[No. L-12012/206/2004-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 3rd day of June, 2014

INDUSTRIAL DISPUTE No. 126/2004

Between :

Sri Y. S. Gangadhar,
C/o Sri V.V. Janardhana Rao,
Flat No.511, B.N. Reddy Colony,
Vanasthalipuram,
Hyderabad ……..Petitioner

AND

1. The Vice President & Dy. Head (HR),
   Corporate Office, M/s. ING Vysya Bank Ltd.,
   No.22, M.G. Road,
   Bangalore -560 001.

2. The Branch Manager,
   M/s. ING Vysya Bank Ltd.,
   Stadium Road, Innispet,
   Rajahmundry. ….Respondents

Appearances :

For the Petitioner : M/s. G. Vidya Sagar, K. Udaya Sri & P. Sudheer Rao, Advocates

For the Respondent : M/s. C. Niranjan Rao &
M. Subramanya Sastry,
Advocates

AWARD

The Government of India, Ministry of Labour vide their letter in reference No. L-12012/206/2004-[IR(B-I)] dated 20.9.2004 required this Industrial Tribunal to adjudicate the dispute,

> "Whether termination of services of Sri Y.S. Gangadhar, Ex.Sub-Staff, Danavaipeta, Extension counter, Rajahmundry(East Godavari District) by way of compulsory retirement with effect from 3.1.2004 by the Management of M/s. ING Vysya Bank Ltd., is legal and justified? If not, what relief the concerned workman is entitled?"

The said reference is numbered on the file of this Tribunal as I.D. No. 126/2004 and notices were issued to the parties concerned. Sri. Y.S. Gangadhar appeared before the court and engaged the assistance of Sri G. Vidya Sagar, Advocate and the Management of M/s. ING Vysya Bank Limited also appeared and engaged the assistance of Sri C. Niranjan Rao Advocate with the consent of the parties and the leave of the Tribunal.

2. **Sri Y. S. Gangadhar who will hereinafter be referred to as workman filed his claim statement with the averments in brief as follows :**

The workman joined the services of the respondent bank in the month of May, 1996 as sub-staff at Rajahmundry branch. During his service he worked in various branches of the said bank to the satisfaction of his superiors. His last drawn pay was Rs.5000/- per month. One Smt. K. Venkata Laxmi, is a customer of the bank, she raised deposit loan of Rs.40000/- and given to one Mr. Appa Rao, Advocate who happened to be the maternal uncle of the workman. While the workman was working as sub-staff in Danavaipet Extension branch, Rajahmudry which was attached to Rajahmundry branch, on 8.5.2001 said Mr. Apparao, Advocate gave Rs.10000/- to the workman with a request to credit the same to the loan account of Smt. K. Venkata Laxmi. Workman prepared a challan for Rs.10000/- and waited for the cashier. In the mean time Smt. K. Venkata Laxmi, came to the branch and enquired with the workman about the remittance of Rs.10000/-. In anticipation of the remittance of money the workman himself has signed on the counter foil and initialed at the place of Manager and Cashier and issued the same to her. He made a credit entry in the loan ledger also. Five or ten minutes later Mr. Apparao, Advocate came there along with Smt. K. Venkata Laxmi and took back of Rs.10000/- from the workman stating that Smt. Venkata Laxmi agreed for payment of loan amount of Rs.40000/- in one installment in future. Since no actual bank transaction took place the workman returned the amount to Sri Appa Rao, Advocate and deleted the credit entry which he has already registered in deposit loan account of Smt. K. Venkata Laxmi. However, he has forgotten to take back the counter foil and it remained with Smt. K. Venkata Laxmi. Taking advantage of the same she alleged to have made a complaint on 27.8.2001 stating that the workman has committed fraud by not depositing Rs.10000/- into the account of her children and that only he has given receipt dated 8.5.2001 for Rs.10000/- the said complaint was given only since the amount was not paid by Mr. Appa Rao within reasonable time. On coming to know of the said complaint, Sri Appa Rao rushed to the bank and repaid the entire amount on 28.8.2001. Thereafter, Smt. K. Venkata Laxmi has withdrawn her complaint on the same day. However, the complaint reached the Chairman of the ING Vysya Bank on 29.8.2001. No action has been taken for five months. Thereafter preliminary enquiry officer has made investigation to the alleged complaint though it was withdrawn. The workman has stated during the preliminary enquiry that there is no loss to the bank and that the complaint has been withdrawn. However, the preliminary enquiry officer has submitted his report dated 16.1.2002 without considering the pleas of the workman. The said preliminary enquiry report was not furnished to the workman. Basing on the findings therein charge sheet dated 22.2.2002 has been issued as if the workman has misappropriated Rs.10000/-, unauthorizedly prepared counter foil for Rs.10000/-, initialing it on behalf of the clerk and cashier without authority and delivered fraudulent counter foil to Smt. K. Venkata Laxmi without remitting the funds to the bank and also attempted for meddling and falsification of bank records by making an unauthorized entry for Rs.10000/- in deposit loan ledger and thereafter resorted to its cancellation without any authority and knowledge of the EC Manager and thereby he resorted to dishonest and questionable acts and suppression of fraudulent act. The workman has submitted his explanation on 23.2.2002, denying the charges and explaining the true circumstances but the same were not considered and the Departmental enquiry was ordered and it was conducted. During the said enquiry neither Smt. K. Venkata Laxmi nor Sri Appa Rao were examined as witnesses. The Management witnesses have stated that no financial loss occurred to the bank and that the workman has been having good relations with the customers and his colleagues in the bank and has been discharging his duties honestly and that in case of emergencies he was discharging high responsibilities also. Inspite of it, the enquiry officer has held the charges as proved. Basing on such report show cause notice dated 165.2003 proposing to impose punishment of compulsory retirement has been issued to the workman calling for his explanation. He submitted his explanation stating that the proposed punishment is not appropriate punishment. However, by virtue of proceedings dated 3.1.2004 punishment of compulsory retirement was imposed against him. It is illegal, arbitrary

and unjust. Workman challenged the same in an appeal dated 29.1.2004. But without considering the grounds of the appeal, the Appellate Authority rejected the same on 29.3.2004. Thereon the workman approached the Assistant Labour Commissioner (C) at Visakhapatnam for conciliation. Since conciliation failed and report has been made to Government of India the present reference has been made. The findings of the enquiry officer and Disciplinary Authority are perverse. They failed to see that in spite of making a request orally by the workman to examine Smt. K. Venkata Laxmi and Sri Appa Rao as witnesses during enquiry, they were not examined. The Disciplinary Authority ought to have seen that the complaint was withdrawn as on the date of issuance of the charge sheet. The evidence on record indicates that only under bona fide impression and in order to avoid inconvenience to the customers the workman has taken the responsibility for making initial on behalf of the clerk and cashier on the counter foil. The complainant herself has stated in her letter dated 28.8.2001 that there is no lapse on the part of the workman. After the amount was taken back by Smt. K. Venkata Laxmi the entry has been deleted from the deposit loan ledger. Thus, there is no mala fide intention or misappropriation of Rs.10000/-. The charges are trivial in nature. Punishment of compulsory retirement is grossly disproportionate to the gravity of the charges. There is no past record of this nature for the workman. The impugned order is liable to be set aside consequently directing the respondent bank to reinstate the workman into service with continuity of service full back wages and all consequential benefits.

3. Respondents filed their counter with the averments in brief as follows:

The respondent bank has received a written complaint dated 27.8.2001 against the workman from one Smt. K. Venkata Laxmi a customer of Dananvaipet Extension counter, attached to Rajahmundry branch of the respondent bank reporting that the workman who is working as sub-staff there has not deposited the amount of Rs.10000/- but gave receipt dated 8.5.2001 and that he committed fraud. A detailed investigation was conducted into the said complaint. On receipt of the report Disciplinary Authority found that there was prima facie case against the workman and issued articles of charge framing definite and distinct accompanies of statement of imputations. The workman has submitted his explanation dated 23.3.2003 to the charge sheet admitting the mistake committed by him. After considering the said written statement filed by the workman in reply to the articles of charge, the Disciplinary Authority decided to order for a domestic enquiry in order to give a fair and reasonable opportunity to the workman. Thus, regular Departmental enquiry was ordered into the charges levelled against the workman appointing an enquiry officer and Management representative. The then Vice-President for Administration was appointed as enquiry officer. The enquiry was held. During enquiry the workman has denied the charges levelled against him. he engaged the services of the Vice-President of All Indian Vysya Bank Employees union to defend him during the enquiry. He was furnished with the list of documents and list of witnesses to be relied upon by the Management supplying copies of documents to him. Copy of investigation report also was furnished to the workman as an additional document on 26.9.2002. The enquiry was proceeded with. Management witnesses No.1 and 2 were examined and 14 documents were marked for the Management. In addition to the cross examination of the witnesses the workman has given his own evidence. His defence representative submitted his written brief vide letter dated 31.12.2002. After considering the entire material on record the enquiry officer has given his report finding that the charges levelled against the workman are proved and finding him guilty of the same. A copy of the report was forwarded to the workman by the Disciplinary Authority. The workman has submitted his reply. But he has not made out any ground for not accepting the findings of the enquiry officer. Disciplinary Authority after considering the views of the workman on the findings of the enquiry, has issued second show-cause notice dated 16.5.2003 proposing the punishment of compulsory retirement. In this connection the workman has been given a personal hearing on the proposed punishment in addition to submitting his written explanation which he submitted on 20.6.2003. After considering all these representations as there was no ground made out for not imposing the proposed punishment the Disciplinary Authority proceeded with issuance of the impugned proceedings dated 31.1.2004 imposing the punishment of compulsory retirement against the workman. Since there were no cogent reasons to modify the punishment of compulsory retirement made out in the grounds of appeal, the Appellate Authority confirmed the said punishment in the order rendered in the appeal preferred by the workman. There is strict compliance of principles of natural justice. The very averments in the claim statement of the workman to the effect that in anticipation of remittance of the cash he himself put the sign on the counter foil and initial at the place of the Manager and cashier and issued the same to Smt. K. Venkata Laxmi and made an entry in the loan ledger clearly demonstrate his dishonesty and misappropriation of the amount. The workman who was working as a sub-staff is not authorized to issue counter foils by affixing his initials at the columns provided in the counter foil which is meant for cashier and Manager/ accountant to affix their initials. The initials on the counter foil are distinctly different with each other. Which exhibits the intention of the workman to make the remitter to believe that the remittance made has been duly accounted for in the books of the branch. Further, the contention of the workman that he made entry in the loan ledger discloses his dishonest intention to misappropriate the amount as

he made the entry in the loan ledger of the Smt. K. Venkata Laxmi without routing the transaction in the normal course which would take place only after getting reflected in the cashier scroll and only after due authorization of the manager/ officer concerned. The contention of the Petitioner that he returned the amount of Rs.10000 to the advocate and he requested for the same coming there together with Smt. K. Venkata Laxmi, since no bank transaction has actually taken place is, not correct and it is made to mislead the court. His contention that the he has forgotten to take back the counter foil is another falsehood. His further contention that Smt. K. Venkata Laxmi has given the complaint as the advocate has failed to pay the amount as promised by him is also incorrect. This is a wholly unbelievable version given by the workman. Mr. Appa Rao has paid away the entire amount and that the complaint has been withdrawn on 28.8.2001 has no nexus to the charges. The complaint has been withdrawn since there was a compromise. The letter given by the complainant subsequently withdrawing the complaint does not disclose that the complaint given by her earlier is a false complaint. It is not made known as to how the workman got prejudiced due to the delay of five months in taking action on the complaint. The contention that there is no loss to the bank, got no substance. Misconduct need not be followed by loss to the bank. The workman has cross-examined the author of the investigation report and copy of the report was supplied to him. As the misdeeds are wholly dependent on the documentary evidence and neither Smt. K. Venkata Laxmi nor Mr. Appa Rao, Advocate is connected to these misdeeds of the workman those persons were not examined. All the misdeeds are admitted by the workman. The only thing remained to be considered is, whether the said acts of the workman constitutes to misconduct. To ascertain and find out the same full-fledged Departmental enquiry has been conducted and during the enquiry the charges were found to be proved. Nothing prevented he workman to examine the above said persons as his defence witnesses. The punishment of compulsory retirement is preceded by a full fledged Departmental enquiry and based on sound and reasonable findings of the enquiry officer supported by oral and documentary evidence which came on record during the course of enquiry. The said decision of the respondent bank is fully justifiable, legal and just and it is not arbitrary. Withdrawing of complaint does not vouch for the honesty of the workman but on the other hand it confirms the misconduct on his part as regards meddling with the branch records and his consequential unethical lapse. He is not authorized either to make or delete entries in the ledgers of the bank. He has not brought to the knowledge of the EC manager the entire transaction, till it came to light through the complaint of Smt. K. Venkata Laxmi. On the other hand he has resorted to unethical practice of striking the entry which was originally made in the loan ledger in order to concede his act of falsification of bank records. There are no circumstances which in any way reduce or mitigate the gravity of the misconduct proved against the workman. The impugned order is not liable to be interfered with.

4. After hearing both parties this Tribunal has held that the domestic enquiry conducted in this case is valid, by virtue of the detailed order dated 23.7.2009.

5. Heard the arguments of either party, under Sec.11A of the Industrial Disputes Act, 1947. They both submitted their respective written arguments also and the same are considered.

6. **The points that arise for determination are:**

I. Whether termination of services of Sri Y.S. Gangadhar, Ex.Sub-Staff, Danavaipeta, Extension counter, Rajahmundry(East Godavari District) by way of compulsory retirement with effect from 3.1.2004 by the Management of M/s. ING Vysya Bank Limited is legal and justified?

II. To what relief the workman is entitled?

7. Point No. I :

The admitted facts of the case are as follows:

The workman has been working as a sub-staff in the Danavaipet Extension counter of Rajahmundry branch of the respondent bank at the relevant time of the present dispute. On 8.5.2001 he received Rs.10000/- from his maternal uncle Mr. Appa Rao, advocate for crediting the same into the loan account of one Smt. K. Venkata Laxmi who was a client of the said advocate. The workman himself prepared a challan and he himself signed on the counter foil of the said challan and also put initials at the places meant for the initials of Manager and the Cashier and issued the said counter foil to Smt. K. Venkata Laxmi, the loan account holder. He also made a credit entry in the loan ledger. Later on he struck off the said entry in the loan ledger. The amount of Rs.10000/- was never credited into the loan account of Smt. K. Venkata Laxmi. Smt. K. Venkata Laxmi gave a report to the bank against this event claiming that though counter foil has been issued to her, the amount was not credited into her loan account. It is also an admitted fact that soon thereafter the entire loan amount was paid away by Mr. Appa Rao, Advocate and Smt. K. Venkata Laxmi has given a letter on the even date withdrawing her complaint. It is an uncontradictory fact that no where in the said letter she claimed that the complaint gave by her is a false complaint. Ex.W1 is copy of the said letter produced by the workman himself before this Tribunal.

8. In consideration of the above events and the complaint, preliminary enquiry was conducted and later on regular Departmental enquiry was conducted giving full and fair opportunity to the workman to defend himself. As already observed above, after hearing both parties,

this Tribunal found that the said Departmental enquiry is valid. In the said Departmental enquiry it was found that the workman is guilty of the charges levelled against him. The said charges are as follows:

(a) That workman has dishonestly misappropriated Rs.10,000 accepted from one Sri Appa Rao on 8.5.2001 meant for remitting to Deposit Loan Account NO.LF 279/2 standing in the name of Smt. K. Venkata Laxmi.

(b) That workman has unauthorizedly prepared counterfoil for Rs.10,000 in the name of Smt. K. Venkata Laxmi, mentioning the date as 8.5.2000, affixed round rubber stamp of the branch, initialed on behalf of clerk and cashier without authority and delivered fraudulent counterfoil to Smt. K. Venkata Laxmi without remitting the funds to the Bank and thus resorted to dishonest and questionable acts.

(c) That workman had attempted for meddling and for falsification of Bank records by making an unauthorized credit entry for Rs.10,000 in the Deposit Loan ledger No.LF 279/2 and thereafter resorted to its cancellation without authority and knowledge of the EC Manager and thereby resorted to its cancellation without authority and knowledge of the EC Manager and thereby resorted to suppression of fraudulent act. Now, it is to be verified whether finding of guilt of the workman for the above said charges and the punishment imposed against him by the Disciplinary Authority are just, reasonable and proper.

9. It can be fully agreed that just because the complaint has been withdrawn by the complainant in the present case, i.e., Smt. K. Venkata Laxmi, it can not be said that the workman is exonerated from the charges. Admittedly, he who was only a sub-staff has received cash for remittance into the loan account of the said lady but failed to remit the same. He himself has prepared the challan and apart from it signed it and also initialed it in the places meant for the initials of the Manager and cashier. The explanation being given by the workman for this conduct on his part is that he waited for the cashier, who was not there, for some time and then singed it by himself to avoid inconvenience to the customers. This is a far fetched explanation which is not at all acceptable. It is not contention of the workman that the cashier, Manager, as well as the clerical staff of the bank were all absent at the given time. Further more, evidently he did not bring this event to the notice of any of his superiors at any point of time prior to this event came to light through the complaint of Smt. K. Venkata Laxmi. Thus, the contention of the respondent bank that it is an unauthorized act on the part of the workman is to be accepted, on all counts. He made an entry in the loan ledger. As rightly pointed out for the respondent making such entry in the loan ledger above is not as per the procedure of the bank. The corresponding entries are to be made in the cash scroll etc.. The same are not made. Conveniently, the workman had struck off the entry made by him in the loan ledger. Either for making the said entry or for striking off the same, he has not secured permission /authority from any of his superiors. It is not his case that he has been maintaining the records of the bank. He was only a sub staff.

10. Admittedly, Mr. Appa Rao, the advocate is the maternal uncle of the workman and the said advocate got some financial dealings with the customer of the bank by name Smt. K. Venkata Laxmi who was also his client. The entire event appears to have been managed to be taken place by the said advocate with the help of the workman to defraud the said lady. To facilitate the said advocate who is the maternal uncle of the workman, the workman has committed all these unauthorized acts which are all misdeeds. Just because the bank did not suffer any financial loss owing to the fact that immediately after the misdeeds came to the light through the complaint of Smt. K. Venkata Laxmi, Mr. Appa Rao, the advocate has rushed to the bank and paid away the entire amount due to the bank into the loan account of Smt. K. Venkata Laxmi, it can not be said that there is rectification of the misdeeds and unauthorized acts committed by the workman to facilitate his maternal uncle. This conduct on the part of the workman is certainly grave misconduct. For such grave misconduct appropriate punishment is certainly warranted.

11. For misappropriation of the public funds removal of the person concerned from service is most reasonable punishment, as being claimed by the respondent bank basing on several legal pronouncements touching this area.

12. In the present case, the counter foil challan issued to the complainant Smt. K. Venkata Laxmi and the entry made in the loan ledger clearly indicate that an amount of Rs.10000 was paid into the bank but it was not actually credited to the loan account of Smt. K. Venkata Laxmi. As per the records, Smt. K. Venkata Laxmi is the customer of the bank who took loan and who gave the amount for crediting the same into her loan account. She was issued with the counter foil challan indicating the said payment. But, said amount was not credited into her loan account. On the other hand, the workman who issued the said counter foil and who made the credit entry in the loan ledger has chosen to strike off the entry in the loan ledger. Thus, it is very much clear from these events, prima facie, that the workman who received Rs.10000 for crediting the same into the loan account of Smt. K. Venkata Laxmi failed to do so, but created record as if the amount was credited to and meddled with the bank records with this regard unauthorizedly. He claimed that he did not misappropriate

the said amount at all and that he returned the said amount to Mr. Appa Rao, Advocate when he came to him together with Smt. K. Venkata Laxmi. But, the complaint of Smt. K. Venkata Laxmi though it was withdrawn later does not indicate such event.

13. Considering all these circumstances, as far as the bank is concerned, it is to be held that they are right in contending that the workman has misappropriated the amount of Rs.10000/- paid to him for crediting the same into the loan account of Smt. K. Venkata Laxmi. He is also guilty of committing unauthorized acts, misdeeds and also meddling with the bank records, for the reason that he unauthorizedly issued the counter foil challan to Smt. K. Venkata Laxmi that too signing and initialing it in the places meant for Manager and cashier and also making entry in the loan ledger unauthorizedly and also striking it off unauthorizedly. Thus, he is rightly found to be guilty of grave misconduct. He was in the service of the bank since substantial period prior to the present event. Thus, he must be having sufficient knowledge of the bank procedure and the consequences of the acts committed by him.

14. In the cases of this nature, the past conduct is certainly irrelevant as rightly contended for the respondent. The respondent bank which is a financial institution dealing with public funds, shall always be vigilant and careful while selecting, engaging and continuing the personnel to deal with their activities. The faith of the public is the foundation for running such financial institutions. The Management of the said institution also can not repose faith in the employee who committed such acts and continue him in their service. Thus, the punishment of compulsory retirement imposed against the workman by the Disciplinary Authority is certainly just and reasonable. Considering the gravity of the proven charges against the workman, it can not be said, at any stretch of imagination that, the punishment imposed is disproportionate. Since, the Departmental enquiry has been validly conducted giving every opportunity to the workman to defend himself and well reasoned report has been made and after giving due opportunity to the workman the Disciplinary Authority concurred with the said findings and even there after giving due opportunity to the workman awarded the punishment which is found to be proportionate to the proven charges, it can safely be held that the impugned order is just, reasonable, legal and not at all arbitrary.

This point is answered accordingly.

15. **Point No. II :**

In view of the finding given in Point No.I above, the workman is not entitled to any of the reliefs sought for.

This point is answered accordingly.

RESULT:

In the result, reference is answered as follows:

Termination of services of Sri Y.S. Gangadhar, Ex.Sub-Staff, Danavaipeta, Extension counter, Rajahmundry (East Godavari District), the workman by way of compulsory retirement with effect from 3.1.2004 by the Management of M/s. ING Vysya Bank Limited is legal and justified. He is not entitled for any of the reliefs sought for by him in his claim statement.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

Ex.W1: Photostat copy of lr. from Smt. K. Venkata Laxmi withdrawing the complaint dt. 28.8.2001

Ex.W2: Photostat copy of extract of deposit loan account ledger showing closure of loan account of Smt. K. Venkata Laxmi dt.28.8.2001

Ex.W3: Photostat copy of explanation to charge sheet dt. 23.3.2002

Ex.W4: Office copy of written brief submitted by workman dt. 30.12.2002

Ex.W5: Photostat copy of removal order dt.3.1.2004

Ex.W6: Office copy of appeal filed by the workman dt. 29.1.2004

Ex.W7: Photostat copy of appeal rejection order dt. 29.3.2004

Documents marked for the Respondent

Ex.M1: Office copy of charge sheet dt. 22/25.2.2002

Ex.M2: Explanation to the charge sheet by workman dt. 23.3.2002

Ex.M3: Enquiry order vide lr.100-01-ER-38 dt. 9/11.4.2002

Ex.M4: Order No.100-01-ER-367 dt. 20.6.2002

Ex.M5: Enquiry notice No. ENQ/GDJ/16/02/376 dt. 20/21.6.2002

Ex.M6: Representation from workman dt. 2.7.2002

Ex.M7: Photostat copy of enquiry notice dt. 3.9.2002

Ex.M8: Request representation of Vice President of AIVBE Union for adjournment of enquiry date, dt.3.10.2002

Ex.M9: Notice dt. 8.11.2002 reg. enquiry

Ex.M10: Notice of Enquiry Officer dt.17.10.2002 to the workman

Ex.M11: Notice of adjournment of enquiry to the workman dt.12.9.2002

Ex.M12: List of documents etc., submitted during enquiry by the management representative dt. 12.9.2002

Ex.M13: Photostat copy of lr. enclosing copies of proceeding dt.12.9.2002

Ex.M14: Proceedings of Enquiry dt.26.9.2002

Ex.M15: Proceedings of Enquiry dt. 5.10.2002

Ex.M16: Proceedings of Enquiry dt. 30.10.2002

Ex.M17: Proceedings of Enquiry dt. 25.11.2002

Ex.M18: Exhibits marked during domestic enquiry

Ex.M19: Letter enclosing written brief of Enquiry Officer dt.16.12.2002

Ex.M20: Written brief of the DR of workman in reply to Ex.M19 dt.30.12.2002

Ex.M21: Photostat copy of lr. enclosing enquiry report to the workman dt.8.3.2003

Ex.M22: Reply of workman to Ex.M21

Ex.M23: Office copy of show cause notice dt.16.5.2003 to the workman

Ex.M24: Office copy of lr. giving opportunity to workman on Ex.M23

Ex.M25: Reply submitted by workman to Ex.M23 dt.20.6.2003

Ex.M26: Proceedings of personal hearing dt. 20.6.2003

Ex.M27: Office copy of order imposing punishment of compulsory retirement on workman dt.3.1.2004

Ex.M28: Grounds of appeal by workman dt.29.1.2004

Ex.M29: Office copy of rejection order in appeal dt. 29.3.2004.

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2151.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 41/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/07/2014 को प्राप्त हुआ था।

[सं. एल-41012/41/2007-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2151.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway, and their workmen, received by the Central Government on 15/07/2014

[No. L-41012/41/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 41/2007

Ref. No. L-41012/41/2007-IR(B-I) dated: 06.09.2007

BETWEEN

The Member Executive
Purottar Railway Shramik Sangh
C/o D.P. Awasthi, 49, Tilak Nagar
Lucknow – 226004.
(Espousing casue of Shri Deen Dayal)

AND

1. The Addl. Divisional Railway Manager
   North Eastern Railway
   Ashok Marg, Lucknow

2. The Sr. Divisional Engineer (C)
   North Eastern Railway
   Ashok Marg, Lucknow

AWARD

1. By order No. L-41012/41/2007-IR (B-I) dated: 06.09.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Member Executive, Purottar Railway Shramik Sangh, C/o D.P. Awasthi, 49, Tilak Nagar, Lucknow – 226004 and the Addl. Divisional Railway, Manager, North Eastern Railway, Ashok Marg, Lucknow & the Sr. Divisional Engineer (C), North Eastern Railway, Ashok Marg, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN EASTERN RAILWAY, LUCKNOW OVER GIVING PUNISHMENT OF DOWNGRADING THE PAY-SCALE OF SHRI DEEN DAYAL, CARPENDER FOR

4 MONTHS PERIOD, WITH IMMEDIATE EFFECT, IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED?"

3. It is admitted case of the parties that the workman, Deen Dayal was placed under suspension; and subsequently, was issued a major penalty charge sheet dated 07.11.2003 for alleged gross misconduct. Initially Shri Saheb Singh, Asstt. Divisional Engineer (East) Lucknow was appointed as Enquiry Officer, who submitted his enquiry report dated 08.09.2004 before the disciplinary authority with finding that the charges leveled against the workman were found proved. The Disciplinary Authority, on the basis of findings of the Enquiry Officer, issued punishment order dated 17.01.2005 whereby the workman was punished of downgrading the pay scale.

4. It has been alleged by the workman's union that the Inquiry Officer in its inquiry report has concluded that the workman may be issued minor penalty charge sheet; but the Disciplinary Authority, without mentioning the reasons for disagreement to the Inquiry Officer, passed the punishment order dated 17.01.2005 without serving show cause notice to the workman. Accordingly, the workman's union has prayed that the Departmental proceedings which were conducted in violation to the principles of natural justice is liable to be set aside.

5. The management of the Bank in its written statement has denied the allegations of the workman's union and has defended its domestic proceedings with submission that the workman had been afforded all opportunity given under rules the principles of natural justice were fully complied with; hence, there is no anomaly with it; and accordingly, has prayed that domestic enquiry proceedings conducted by it may be upheld and the action of the railway vide order dated 17.01.2005 be declared just, fair and legal without any benefit to the workman concerned.

6. The workman's union has filed rejoinder reiterating the averments made in the statement of claim.

7. The parties filed documents in support of their respective case. Following preliminary issues were framed in the presence of the parties vide order dated 08.02.2011:

(i) Whether the domestic inquiry held by the Inquiry officer is fair and proper? If so, its effect.

(ii) Whether the findings of inquiry officer are perverse? If so its effect.

After framing of preliminary issues the workman was called upon to adduce its evidence.

8. The workman filed its affidavit in support of his pleadings; but the management did not turn up for cross-examination in spite of several opportunities being afforded, which led to closing the opportunity of the management to cross-examine the workman's witness and next date was fixed for management's evidence. The management did not produced any evidence and the next date was fixed for arguments. The parties once again refrained from argument; accordingly, the case was reserved for orders.

9. Following orders were passed on preliminary issues vide order dated 06.11.2013.

"The disciplinary enquiry was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself; and also, the findings of the Enquiry Officer do not appear to be perverse. As such, both the issues are decided in favour of the management. The parties are called upon to forward their argument regarding quantum of punishment vide impugned order dated 17.01.2005."

10. Accordingly, 16.01.2014 was fixed for arguments on the point of quantum of punishment under Section 11 A of the Industrial Disputes Act, 1947. The parties again remained reluctant to forward their case on several dates and almost a year passed waiting for parties to argue their case and finally the case was reserved for award, keeping in view the reluctance of parties to contest their case and long pendency of the case since 2007.

11. The workman's union has come up with the case that he was served upon a major penalty charge sheet for alleged occupation of railway quarter without allotment. It has been pleaded that the Inquiry Officer, finding the charges to be proved, concluded with the report that a minor penalty charge may be issued to the workman; but the Disciplinary Authority did not agree with the report of the Inquiry Officer and without issuing a show cause notice inflicted punishment upon the workman, which was in flagrant denial of the principles of natural justice.

12. The management, in rebuttal, has defended the departmental inquiry conducted by it and has pleaded that the same was conducted in accordance with the norms laid down under Rules and all reasonable opportunity to defend himself was afforded to the workman.

13. I have scanned entire evidence on record, in the light of rival pleadings of the parties.

14. The workman has proved it's pleading by filing its affidavit; but the management did not turn up for cross-examination of the workman's witness in spite of several opportunities being afforded, which led to closing the opportunity of the management to cross-examine the workman's witness. Hence, the evidence of the workman remained unrebutted and has to be relied on. But from perusal of the affidavit filed by the workman it comes out that the workman has made an admission to the matter under contention i.e. regarding occupation of the railway quarter.

15. Entering into the merits of the case, admittedly the workman was issued a major penalty charge sheet with allegation that he occupied the Government accommodation without any formal allotment. The workman has denied this allegation. But on going through the para 02 of the affidavit filed by the workman, in support of his pleadings goes to show that the workman was actually in occupation of the alleged accommodation. The para 02 of the affidavit, filed by the workman is as under:

> 2. That the deponent had occupied the said Railway quarter on the basis of verbal order of the Asstt. Engineer (West) Shri V.K. Srivastava the then controlling authority of the deponent."

This goes to show that the workman actually occupied the government accommodation without any formal/written orders, which were necessary to make held him responsible for the allotment, deductions from his salary etc. There is no rule of verbal allotment of the government accommodation to any official nor the workman could lead to the evidence to the effect before the Inquiry Officer that the said verbal allotment was valid one in eye of the law. In fact, the workman could not rely upon any rule, before this Tribunal also, as to under which Rule the said accommodation was allotted to him verbally and it was valid one.

16. Now it comes to the question whether court can exercise its powers under Section 11-A of the Industrial Disputes Act, 1947, which empower the Labour Court to interfere with the punishment imposed upon the workman. Hon'ble Apex Court in B.C. Chayurvedi v. Union of India, (1995) 6 SCC 749 while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

> "The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."

In DG, RPF vs. Sai Babu (2003) 4 SCC 331, Hon'ble Apex Court has observed that:

> "6……. Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works."

17. Section 11 A of the Industrial Disputes Act, 1947 reads as under:

> "11A. Powers of Labour Courts, Tribunal and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. – Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal of National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, be its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:
>
> Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

A bare reading of the section makes it clear that Section 11 A of the Industrial Disputes Act has been enacted to empower the Labour Court to interfere with that management's decision to dismiss, discharge or terminate the services of a workman in such cases. In respect of other punishments, it has been observed and consistently held by the Courts that the tribunal does not have power to substitute its own judgment for that of the management. Hon'ble Apex Court in South Indian Cashew Factories Workers'' Union vs. Kerala State Cashew Development Corpn. Ltd (2006) 5 SCC 201 made the following observations:

> "Section 11-A of the Act gives ample power to the Labour Court to re-appraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. Section 11-A of the Industrial Disputes Act is only applicable in the case of dismissal or discharge of a workman as clearly mentioned in the section itself."

18. Whether similar power can be exercised by the Labour Court where the punishment award is neither dismissal, punishment or retrenchment? This issue has been considered by Hon'ble Allahabad High Court in

Allahabad Bank vs. Presiding Officer, Central Govt. Industrial Tribunal-cum- Labour Court, Kanpur & others 2012 (133) FLR 1098; where it has been observed that:

> "Section 11-A empowers the Labour Court to re-appreciate the evidence and correct the judgment, in case of discharge, dismissal and termination, while in case of other punishments, no such power is vested with the Labour Court".

19. It is established that the workman actually committed the misconduct for which he was charge sheeted and accordingly he was imposed a minor penalty. There is no reliable material for recording findings that the alleged action of the management of railway in imposing minor penalty upon the workman vide order dated 17.01.2005 was or the same was excessively harsh or disproportionate one.

20. Accordingly, in view of the above decision of Hon'ble Supreme Court, I am of opinion that the punishment order 17.01.2005 need not to be interfered by this Tribunal. Hence, the reference is adjudicated against the workman's union; and as such, I come to the conclusion that the workman, Deen Dayal is not entitled to the relief claimed.

21. Award as above.

Dr. MANJU NIGAM, Presiding Officer

LUCKNOW.

14th July, 2014

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2152.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 28/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/07/2014 को प्राप्त हुआ था।

[सं. एल-41012/36/2007-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of North East Railway, and their workmen, received by the Central Government on 15/07/2014

[No. L-41012/36/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 28/2007

Ref. No. L-41012/36/2007-IR (B-I) dated: 03.07.2007

BETWEEN :

The General Secretary
All India Station Masters Association
C/o 107/76, Jawahar Nagar
Kanpur (U.P.)
(Espousing cause of Shri Ranbechan)

AND

The Divisional Railway Manager
North East Railway, Ashok Marg
Lucknow.

AWARD

1. By order No. L-41012/36/2007-IR (B-I) dated: 03.07.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the General Secretary, All India Station Masters Association, C/o 107/76, Jawahar Nagar, Kanpur (U.P.) and the Divisional Railway Manager, North East Railway, Ashok Marg, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

> "WHETHER THE ACTION OF THE MANAGEMENT OF NORTH EAST RAILWAY, LUCKNOW IN NOT GIVING OVERTIME ALLOWANCE FOR DOING EXTRA DUTY ON 25.05.2003 TO 30.11.2005 TO SHRI RAMBECHAN S/O BHAGIRATHI, CABINMAN, IS JUSTIFIED? IF NOT, TO WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED?

3. The case of the workman's union, in brief is that the workman, Rambechan was appointed as Gateman in the railways in 1966 and was further made Cabin Man in 1980. It is submitted that the workman was transferred from Jarwal Road Cabin to Rawatpur Railway Station on 10.05.2003 and accordingly, he joined Rawatpur railway station under NER division on 25.05.2003. It is further submitted that at Jarwal Road Cabin the workman used to perform 8 hours' duty whereas on joining Rawatpur railway station he was put to discharge 12 hours' duty. The workman complained before Regional Labour Commissioner (Central) on 18.09.2003 against this unfair practice. The Regional Labour Commissioner after inquiry

referred the matter to NER, Lucknow Division and required it to curtail the working hours to 8 hours. The DRM office vide dated 14.11.2005 admitted before Regional Labour Commissioner (Central), Kanpur that the working hours were in excess; but denied to pay over time. The workman's union has submitted that the workman was put to 12 hours' duty each day from 25.05.2003 to 30.11.2005; and accordingly the workman's union has prayed that the workman be held entitled for grant of overtime allowance w.e.f. 25.05.2003 to 30.11.2005.

4. The management of the North Eastern Railway has filed its written statement; wherein it has disputed the claim of the workman's union. It has submitted that the 'duty roster' of a Cabin Man at Jarwal Road Station was for 8 hours whereas the duty roster of Cabin Man at Rawatpur Station was for 12 hours; accordingly, the workman was put to duty for 12 hours. It is specially submitted that the workman from 25.05.2003 to 30.11.2005 was posted at E.I. Roster where there is a provision for 12 hours' duty without any overtime allowance, accordingly, no overtime is payable to the workman. Therefore, the management has prayed that the workman is not entitled for grant of overtime allowance and the claim of the workman's union is liable to be rejected being devoid of any merit.

5. The workman's union has filed its rejoinder; wherein it has apart from reiterating the averments already made in the statement of claim and has submitted that overtime allowance is payable only when the duty roster for 12 hours.

6. The Parties have filed documentary evidence in support of their case. The workman's union examined the workman in evidence who was cross-examined by the authorized representative of the management. But the management has not forwarded any evidence, in spite of ample opportunities being forward to it, and accordingly the management's opportunity to lead evidence was closed and the case was fixed for arguments. The parties forwarded its oral argument in support of their respective cases.

7. Heard representatives of the parties and perused entire evidence on record and gone through respective pleadings of the parties.

8. The authorized representative of the workman's union has argued that the workman was put to 8 hours' duty at Jarwal Road Station; but when he joined Rawatpur he was put to 12 hours duty, therefore, the workman is entitled for over time allowance for the period he worked at Rawatpur Station i.e. from 25.05.2003 to 30.11.2005.

9. Per contra, the authorized representative of the management has argued that the duty roster at Jarwal Road Station was for 8 hours; whereas the duty roster at Rawatpur Station was for 12 hours, therefore, the workman is not entitled for any over time allowance.

10. I have given my thoughtful consideration to the rival submissions of the authorized representatives of the parties their pleadings and entire evidence available on record.

11. The workman's union has come forward with a case that the workman was put to 12 hours duty which was in excess to 8 hours' normal duty period, therefore, the workman should be granted overtime allowance for the period he was put to 12 hours' duty. The management has denied the claim of the workman's union with contention that the duty roster at the place of posting of the workman was for 12 hours, therefore, he cannot be allowed any overtime allowance.

12. The workman's union has pleaded that the workman as made to work for 12 hours; and accordingly, he was liable to be paid over time for excess period he worked; but the management has taken plea that the duty roster at the place of posting was for 12 hours, therefore, the workman cannot be paid any overtime allowance.

The workman has filed photocopy of numerous documents which include applications/representations made to the railway administration for payment of overtime allowance and complaint made before Regional Labour Commissioner (Central), Kanpur for alleged unfair practice adopted by the workman; but has not filed any rule or any document which may provide that the duty roster followed at Rawatput Station was for 8 hours; but he was put to 12 hours' of duty, which was in excess to the duty roster followed at Rawatpur; and this might held him entitle for over time allowance. On the contrary, the management has filed photocopy of duty roster vide list dated 28.03.2011 in respect of Cabin Man at Rawatput Station, paper No. 15/4, which provides that hours of duty at Rawatpur Station in respect of Cabin Man was 12 hours; and thereby has proved that actually the duty roster that was followed for Cabin Mans at Rawatpur was for 12 hours and accordingly the workman was put to 12 hours duty, therefore, he was rightly denied of overtime allowance.

13. Thus, from the discussions made hereinabove, it is clear that the workman's union failed to discharge the burden that lied upon it and failed to prove its pleadings by cogent documentary evidence regarding entitlement of the workman for overtime allowance, therefore, I come to the conclusion that action of the management of North Eastern Railway, Lucknow in not giving overtime allowance to the workman is neither illegal nor unjustified. Accordingly, the workman concerned is not entitled for any relief.

18. The reference is answered accordingly.

LUCKNOW

15th July, 2014

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2153.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई के पंचाट (संदर्भ संख्या 53/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/07/2014 को प्राप्त हुआ था।

[सं. एल-41011/69/2008-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Mumbai as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 16/07/2014.

[No. L-41011/69/2008-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K. B. KATAKE, B.A.LL.M, Presiding Officer

REFERENCE No. CGIT-2/53 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF WESTERN RAILWAY

The Divisional Railway Manager (E)
Western Railway
Mumbai Division
Mumbai Central
Mumbai-400008.

AND

THEIR WORKMEN

The Secretary
Paschim Railway Karmachari Parishad
33, Moti Bhuvan, 2nd floor
Dr. D'Silva Road
Dadar (W)
Mumbai 400 028.

APPEARANCES :

For The Employer : Mr. Abhay Kulkarni, Advocate.

For The Workmen : Mr. M. B. Anchan, Advocate.

Mumbai, the 9th June, 2014

AWARD PART-I

1. The Government of India, Ministry of Labour & Employment by its Order No.L-41011/ 69 /2008-IR (B-I) dated 11.06.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of Western Railway Administration, Mumbai by terminating the services of Shri Ashok Kumar Yadav, Bungalow Peon, is justified? If not, to what relief is the workman?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party union filed their statement of claim at Ex-6. According to them workman Ashok Kumar Yadav was appointed as Bungalow Peon since 26/12/2005 at the Bungalow of Ms. Rita Raj, Divisional Commercial Manager, Western Railway at Baroda. After completing 120 days he was granted temporary status from 6/1/2006. In May 2007, Ms. Rita Raj was transferred from Baroda to Mumbai. On her application her Bungalow Peon i.e. Workman, Ashok Kumar Yadav was also transferred to Mumbai and he was working at her Bungalow. He worked there from 03/09/2007 to 14/09/2007. On 14.9.2007 workman had been to the Bungalow of Ms. Rita Raj to resume his duty. However she did not allow him to resume his duty. Therefore on the next day workman made representation to Ms. Rita Raj. In spite of that she did not allow him to join his duties. The workman therefore made complaint to President of their union and also filed complaint with Police and sent representation to Divisional Manager, Western Railway with a request to allow him to join his duties. However he did not get any reply. Therefore he used banner with a request to DRM to allow him to join his duty. Ms. Rita Raj called RPF Personnel and they assaulted and beat the workman. Therefore he was admitted in the hospital. The workman was never absent. On the other hand he was not allowed to join his duties by Ms. Rita Raj.

3. The workman was charge-sheeted that he had made STD calls from the residential telephone of Ms. Rita Raj. Another charge leveled was that he was unauthorisedly absent from duty from 14/09/2007. The workman was not given opportunity for his explanation in respect of the charges of making STD calls from the residential telephone of Ms. Rita Raj with her permission. He had also paid the charges thereof. He was never absent from duty. On the other hand Ms. Rita Raj did not allow him to resume his duties. In the inquiry proceeding Ms. Rita Raj was important witness. However neither she was examined nor was made available for cross examination. In spite of that Inquiry Officer held him guilty and his services were terminated. The workman was not given sufficient

opportunity to defend himself. The Inquiry Officer had violated the Principles of Natural Justice. Therefore the workman has raised industrial dispute. As conciliation failed, on the report of ALC (C) the Central Labour Ministry has sent the reference to this Tribunal. The union therefore prays that the order of termination be set aside and the workman be reinstated in service with full back wages with continuity of service.

4. The first party management resisted the statement of claim vide its written statement Ex-14. According to them while working as a Bungalow Peon at Vadodara in the absence of Ms. Rita Raj the workman used to make STD calls from her residential telephone without her permission and warning notice was issued to him in that respect of 18/08/2006. In reply thereto the workman admitted the facts and had apologized in writing. After transfer of Ms. Rita Raj to Mumbai, the workman was also transferred to Mumbai. However he remained unauthorisedly absent from 14/09/2007. Due to which Ms. Rita Raj suffered great difficulties. Though he was absent from duty, he used to visit office of DRM, BCT. He also requested Mr. Haridas G. to issue him sick memo. He advised him to report his duty as he was not sick. Competent Authority issued charge sheet dt.9/10/2007 to the workman for the aforesaid STD calls as well as for unauthorized absence. Initially workman refused to accept the charge sheet as it was in English and required it in Hindi. Subsequently he accepted the charge-sheet. The Inquiry Officer was appointed and departmental inquiry was initiated against the workman. The Inquiry Officer conducted the inquiry as per the rules. He recorded the evidence of the management. Opportunity was given to the workman to cross examine the management witnesses. The workman was also given an opportunity to lead his evidence. After completion of the hearing the Inquiry Officer held the workman guilty. Accordingly he sent his report to the disciplinary authority. Disciplinary Authority sent the copy of the report to the workman with show-cause notice. After giving him hearing the disciplinary authority terminated the services of the workman. The inquiry was fair and proper and findings of the Inquiry Officer are in consonance with the evidence on record. The punishment of termination is the appropriate punishment. Therefore management submits that it needs no interference. Therefore they pray that the reference be rejected with cost.

5. Following are the preliminary issues for my determination in this part-I award. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the inquiry is fair and proper?	No
2.	Whether the findings of I.O. are perverse?	Yes

REASONS

Issues No. 1 & 2 :-

6. In the case at hand in respect of the first charge of making STD calls, workman has not denied that he made STD calls as his mother was ill. According to him those STD calls were made by him with permission of Ms. Rita Raj. It is further contended on behalf of the workman that, he has paid the charges of STD calls. Therefore according to him Ms. Rita Raj is the most relevant and essential witness in this regard. It is also contended on behalf of the workman that since 14/9/2007 every day he has reported to the Bungalow of Ms. Rita Raj and she did not allow him to resume his duty. This allegation is also denied by the first party. In the circumstances according to the second party Ms. Rita Raj was the concerned and only witness in respect of both the charges leveled against the workman. According to the second party workman the main and most important witness, Ms. Rita Raj was not at all examined and she was not made available for cross examination. Therefore according to the ld. adv. for the second party it amounts to violation of Principles of Natural Justice. In support of his argument the ld. adv. for the second party resorted to the ruling of Central Administrative Tribunal Patna Bench in C.C.S. Dwiwedi V/s. Union of India 1989 (4) (CAT) 892. In that case the applicant therein was charged that he has taken money and given a chit to passenger to travel and did not credit the money. In that case neither the chit was produced nor the passenger was examined as witness. In the circumstances the Tribunal quashed the order of disciplinary authority by observing that;

> "Non-examination of such witness was denial of reasonable opportunity to the workman."

7. In the case at hand the facts are not disputed that Ms. Rita Raj was the sole officer who has made complaint about using her residential telephone by the workman to make STD calls. According to the workman he had used the said telephone with permission of Ms. Rita Raj and he also paid the charges thereof. Furthermore the said charge was of the year 2006. The management witness has admitted in his cross at Ex-27 that the charges of the calls made by the workman were recovered from his salary. In the circumstances whether the STD calls were made with permission of Ms. Rita Raj or without her permission is the only question for which Ms. Rita Raj was the important and relevant witness. So also in respect of the charge of absent from duty. According to the workman he was reporting to the Bungalow of Ms. Rita Raj and she did not allow him to resume his duty. Therefore he made complaint to Union, General Manager as well as to Police. In this respect also Ms. Rita Raj was the relevant and important witness. Both the charges were framed on the workman as per the complaint of Ms. Rita Raj. The Inquiry Officer has not examined her and has not made her available for

cross examination. In the light of above decision of CAT it amounts to denial of reasonable opportunity to the workman to defend himself. No doubt it is violation of Principles of Natural Justice. In the circumstances I hold that inquiry is not fair and proper. Consequently I also hold that the findings of the Inquiry Officer are perverse as he has not given fair and proper opportunity to the workman to defend himself. Accordingly I decide this issue no.1 in the negative that the inquiry is not fair and proper and issue no.2 in the affirmative that the findings of the Inquiry Officer are perverse. Thus I proceed to pass the following order.

ORDER

(i) The inquiry is found not fair and proper.

(ii) The findings of the Inquiry Officer are declared perverse.

(iii) Opportunity is given to the first party management to prove the charges by leading evidence. Parties to remain present on the next date of hearing.

Date: 09/06/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 91/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/07/2014 को प्राप्त हुआ था।

[सं. एल-41012/251/2000-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 16/07/2014.

[No. L-41012/251/2000-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/91/2001

PRESIDING OFFICER : SHRI R.B.PATLE

Divisional Secretary,
Rail Mazdoor Union,
C/o Shri Triloki Prasad,
Pointman, Office; Chief Yard Master,
Central Railway, Satna .....Workman/Union

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur .....Management

AWARD

Passed on this 17th day of June, 2014

1. As per letter dated 14-5-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/251/2000/IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of Central Railway, Jabalpur reverting Shri Triloki Prasad from the post of Train clerk to his original post w.e.f. 15-8-93 while he has worked 30-7-87 to 6-5-88 and again from 21-8-88 to 14-8-93 is justified? If not, what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman filed Statement of Claim at page 3/1 to 3/3. Case of workman is that he was appointed as Station Porter on 25-2-85 in Pay Scale Rs.750-950. He was discharging his duties satisfactorily. That workman was discharging duties of clerk from 30-7-88 and again from 21-8-88 to 14-8-93 in two spells of 9 months and 5 years respectively. However workman was not paid salary of the post of train clerk. He was paid salary of station porter. From 15-8-93, workman was discontinued from work as train clerk instead of repeated representations. His status of train clerk was not restored. He was not paid allowance for discharging duties of higher post i.e. train clerk. Workman further submits that since 1990, he was working in post of train clerk. The memorandum/charge was issued against him. He denoted his designation as train clerk. That his representations were not replied by management. That he had worked for more than maximum period prescribed in DR rules. As train clerk. On such ground workman is praying that his reversion is illegal. Management be directed to pay difference of salary.

3. IInd party raised preliminary objection that workman was never appointed as train clerk. There was no question of his reversion. The Govt has committed error while making reference. The reference is liable to be rejected. Workman has claimed promotion for the post of clerk from 12-8-93. The dispute is raised in 2001 highly belated as not tenable. Dispute is raised by Union. Union is not existing in establishment of IInd party therefore reference is not tenable. Workman was initially appointed as station porter. He worked as train clerk. That 50 % post was filled by direct recruitment and 50 % by Selection against OPTG staff. Workman was not promoted. On 23-8-00, workman was promoted on the post equal to the grade of TNC. All

other adverse contentions of workman are denied. Workman has not produced documents in support of claim as per required rules. IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Central Railway, Jabalpur reverting Shri Triloki Prasad from the post of Train clerk to his original post w.e.f. 15-8-93 while he has worked 30-7-87 to 6-5-88 and again from 21-8-88 to 14-8-93 is justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to any relief as claimed by him.

REASONS

5. Workman is claiming that he was working as train clerk in two blocks of time. He was not paid salary of train clerk. Workman not filed evidence in support of his claim. Evidence of workman is closed on 27-10-2010.

6. Management filed affidavit of evidence of witness Shri Gyananand Shukla supporting contentions of IInd party in Written Statement. His evidence remained unchallenged as witness of management was not cross-examined by workman. For absence of evidence, I record my finding in Point No.1 in Affirmative.

7. In the result award is passed as under:-

(1) The action of the management of Central Railway, Jabalpur reverting Shri Triloki Prasad from the post of Train clerk to his original post w.e.f. 15-8-93 while he has worked 30-7-87 to 6-5-88 and again from 21-8-88 to 14-8-93 is legal.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2155.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 02/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 08/07/2014 को प्राप्त हुआ था।

[सं. एल-41012/88/2007-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 08/07/2014

[No. L-41012/88/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 02/2004

Ref. No. L-41012/88/2007-IR(B-I) dated: 08.10.2007

BETWEEN

Mandal Sanghatan Mantri
Uttar Railway Karmachari Union
283/63 KH (B), Ghari Kanora, Prewati Nagar
Post: Manak Nagar
Lucknow – 6
(Espousing cause of Shri Shiv Kumar)

AND

Senior Personnel Officer
Northern Railway
Loco Shop, Chaar Bagh
Lucknow.

AWARD

1. By order No. L-41012/88/2007-IR(B-I) dated: 08.10.2007, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sanghatan Mantri, Uttar Railway Karmachari Union, 283/63 KH (B), Ghari Kanora, Prewati Nagar, Post: Manak Nagar, Lucknow and Senior Personnel Officer, Northern Railway, Loco Shop, Chaar Bagh, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW OVER NON PAYMENT OF PCO ALLOWANCES TO SHRI SHIV KUMAR, TKT. NO. IS-08 FROM 25/06/1998 TO 17/04/2001 LIKE OTHER WORKMEN, IS JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN CONCERNED IS ENTITLED?"

3. The case of the workman's union, in brief, is that the workman, Shiv Kumar, was appointed as skilled fitter on 05.07.77. It is alleged that the workman was made to join in the inspection shop on the basis of suitability vide office order dated 23.10.97 without PCO allowance w.e.f. 25.06.98;

whereas the other employees were given PCO allowance from the date of resumption of the charge. It is stated that the management has granted him PCO allowance, on making various representations, w.e.f. 18.04.2001. Accordingly, the workman's union has prayed that the workman be granted PCO allowance from 25.06.98 to 17.04.2001.

4. The management has disputed the claim of the workman's union and filed its written statement; wherein it has stated that the workman was appointed as skilled fitter on the sanctioned post of Speedometer in the Cadre of year 1991-92 without PCO allowance and was posted in Diesel Shop and at the time of his posting in Diesel Shop, the Cadre of year 1996-97 was zero. It is submitted that a policy settlement was regarding PCO allowance; wherein it was decide that on the basis of Cadre of year 1991-92, the suitability test of the working employees be done and according to the Cadre of year 1996-97, they may be appointed in Inspection Shop and paid PCO allowance. Rest employees shall remain posted on their place of posting without PCO allowance and they will be promoted in the Shop floor. The workman after screening was posted in inspection shop without PCO allowance. It is submitted that at the time of his posting in PCO, it was decided in consultation with both the recognized unions that staff in PCO would be made on the basis of Cadre strength of 91-92 but PCO allowance would be applicable on the basis of Cadre strength sanctioned in the year 1996-97 and in Cadre of 96-97 there was no sanctioned posts of Fitter Electrical Grade I as PCO allowance; accordingly, PCO allowance could not be granted to the workman for the want of post but in other cases there was sanctioned post even in the Cadre of 96-97 as such they were sanctioned PCO allowance. Therefore, the management has prayed that the claim of the workman's union be rejected being devoid of merit.

6. The workman's union has filed its rejoinder whereby it has stated nothing new apart from reiterating his averments already made in the statement of claim.

7. The workman's union has filed photo copy of documents in support of its claim; whereas the management has filed none. The workman has examined himself whereas the management has not forwarded any evidence, in spite of ample opportunities being forward to it, which led to presumption that the management is not interested to lead evidence hence its opportunity to lead evidence was closed and the case was fixed for arguments. The management again did not turn for arguments and the authorized representative argued his case.

8. Heard representatives of the workman's union only and perused entire evidence on record and gone through respective pleadings of the parties.

9. The workman's union has contended that the management of railways deprived the workman of PCO allowance for which he was entitled as the other employees were getting. The management has pleaded that the PCO allowance was admissible on the basis of Cadre strength of 96-97 and since there was no post in 96-97, therefore the workman was not allowed PCO allowance on his joining on the post.

10. The workman union's case is that the workman is entitled for PCO allowance since his joining in the inspection shop at par with other similarly situated employees. The management has controverted the case with pleading that the PCO allowance was admissible on the basis of Cadre strength in Diesel Shop in 1996-97, which was zero. Also, in view of the settlement arrived at between the management and recognized unions, those who clear the suitability test according to Cadre of year 1996-97, may be appointed in inspection shop with PCO allowance. Also it was decided that the staff in PCO would be made on the basis of Cadre strength of 91-92 but PCO allowance would be applicable on the basis of Cadre strength sanctioned in the year 1996-97. Since, in the Cadre of 1996-97 there was no sanctioned post of Fitter Electrical Grade-I, as such the workman was not allowed PCO allowance for the want of post in the Cadre of 96-97. However, the other employees were given PCO allowance as their cases were covered under existing policy and availability of post. The workman was granted PCO allowance w.e.f. 18.04.2001 as a result of decision arrived at, in the meeting with the recognized unions and railway administration.

10. The workman in his cross-examination has admitted that he is of 96-97 batch. He could not recall name of any employee who were receiving PCO allowance. The management of the railways has not adduced any evidence inspite of number of dates were given to them.

11. The management has disputed the claim of the workman's union with pleading that the PCO allowance was admissible on the basis of Cadre strength of 96-97 and since there was no post in 96-97, therefore, the workman was not granted PCO allowance; but the management did not prove its pleadings through evidence as it did not turn up to file any evidence. On the contrary the workman has proved its pleadings by the way of evidence and he was duly cross-examined by the authorized representative of the management. Hon'ble Apex Court in State of U.P. vs. Sheo Shanker Lal Srivastava & others (2006) 3 SCC 276 the statement of the witness, having not been controverted would be deemed to be admitted.

12. Hence, in view of the facts and circumstances of the case and law cited hereinabove, I am of the considered opinion that the action of the management of Northern Railway in non-payment of PCO allowance to the workman for the period 25.06.1998 to 17.04.1998 was not justified Accordingly, the workman concerned is entitled for

payment of PCO allowance for the period 25.06.1998 to 17.04.1998.

13. The reference under adjudication is answered accordingly.

14. Award as above.

Dr. MANJU NIGAM, Presiding Officer

LUCKNOW

03rd July, 2014

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2156.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 328/99 और 2A/04) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/282/99-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 328/99 & 2A/04) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 16/07/2014

[No. L-12012/282/99-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/328/99&A/2/04

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Ram Nagwanshi,
General Secretary,
Dainik Vetan Bhogi Bank
Karmachari Sangathan,
Hardev Niwas, 9, Sanver road,
Ujjain (MP) .....Workman

Versus

General Manager (Operations),
State Bank of Indore,
Merged as State Bank of India
Local Head Office,
Hoshangabad Road,
Bhopal ....Management

AWARD

(Passed on this 30th day of June, 2014)

1. As per letter dated 15-11-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/282/99/IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of State Bank of Indore, Branch Ranjhi in not making Shri Mukesh Phoolchand Agarwal permanent till date whereas he has completed his services within prescribed time limit is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to parties. Workman submitted statement of claim at page 5 to 9. Case of Ist party workman is that he was engaged against vacant post of peon by Branch Manager Santosh Nirkhe from 26-12-88. Workman was doing work of cleaning, sweeping, dusting in the Bank. Besides he was also required to do other work of peon. He had worked under different Branch Managers. He was paid bonus from 1988 to 1993. He worked more than 240 days during each of the year. That agreement was settled between management and Union on 13-7-93. As per said settlement, the employees completed more than 240 days service were entitled for appointment as permanent employee. Workman submits that he has acquired status of regular employee under Section 25-B of I.D.Act. On such ground, workman prays for appointment/ regularization as permanent employee and direction for payment of difference of wages.

3. IInd party filed Written Statement at page 15 to 29. IInd party raised preliminary objection. That workman was engaged on daily wages on contract basis at wages Rs.12 per day for fetching water from the tap which was outside the branch premises during summer season. That municipal tap is not available in the Branch office. Sometimes workman was asked to clean toilets, removing of almirahs and also cleaning of branch premises, he was purely engaged on contract basis. There was no employer employee relationship. Workman was never employee of the Bank. His services were on contract basis. Above contentions are reiterated by IInd party that workman had not completed 240 days or 295 days services. That the wages were increased from Rs.3/- to 5/- per day. The Branch Manager has no power to engage regular employees. It is reiterated that workman was assigned job of cleaning, fetching water at contractual rates fixed by Bank. Workman was not employee of the Bank. That on completion of 240 days service, workman is not entitled for regularization. However as per law, the services of employee can be considered for regularization on completion of 240 days service,. The workman was engaged on daily wages for job assigned to him on contract basis. Workman is not entitled to regularization claimed by him.

4. Workman filed rejoinder at page 55 to 65 reiterating his contentions in statement of claim. The workman submits that in terms of agreement arrived, number of employees have been absorbed in permanent service. Those employees were similarly situated and other persons namely Sarvashri Narhar Singh from Ranjhi Branch, Ramesh from Gorakhpur branch, Umakant from Regional office Jabalpur and Pranav from Jabalpur branch presently posted at Katni, Raipur, Jabalpur and Satna branches in the Bank. That workman was required to work from 10 AM to 5.30 PM performing duties of peon/farrash. He claims to have right for regularization of his service.

5. Application A/2/04 is filed by applicant workman under Section 33-A of I.D.Act for violation of Section 33 of I.D.Act. That the applicant submits that during pendency of reference R/328/99, his service conditions were terminated by oral order dated 7-11-03. Order of his termination of his service is arbitrary. He prays for direction that non-applicant be directed to allow him to work with consequential benefits.

6. Said application is opposed by Non-applicant filing reply at Page 4/1 to 4/5. Non-applicant has alleged that workman was engaged on contact basis at wages Rs.12/- per day. The wages were increased to Rs.3/- to 5/- per day. Workman was required to work 2-3 hours per day. That application deserves to be dismissed.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of State Bank of Indore, Branch Ranjhi in not making Shri Mukesh Phoolchand Agarwal permanent till date whereas he has completed his services within prescribed time limit is legal and justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order
(iii)	Whether applicant proves that his services are orally terminated by Non-applicant during pendency of R/328/99?	In Affirmative
(iv)	If so, to what relief workman is entitled?	As per final order.

REASONS

8. During pendency of present Reference R/328/99, workman filed present proceeding under Section 33-A of I.D.Act alleging oral termination of his service from 7-11-2003. The legal position is shattered that complaint under Section 33-A is required to be decided as a dispute. In present case, though the proceeding are separate, application 2/04 is arising out of R/328/99. It needs to be decided simultaneously.

9. Workman filed affidavit of his evidence in R/328/99. Workman has stated that he was engaged on daily wages from 26-12-98. He was doing work of cleaning, dusting etc. he was also required to do work of peon. He was paid bonus from 88 to 93, 96, 97. He completed 240 days continuous service. In his cross-examination, workman says that he is still working on daily wages at Ranjhi branch. One Narhar Singh working with him on temporary basis is made permanent. Smt. Durga Devi is also made permanent. He was unable to tell what is permanent appointment. That he had submitted application for appointment of sub-staff but he was not called for interview. He was not able to tell person who passed test/interview are given appointments that there is no document which shows wages to Rs.120/- per day are paid to the employees. That his age is 40 years. He denies that he is not eligible for appointment. He has passed sixth standard and claims to be eligible for regular appointment.

10. Evidence of management's witness Onkar Singh is submitted on affidavit. Management's witness in his affidavit says there is no pleading that workman is member of the Union. Workman was never given appointment letter, he was engaged on contract basis @ Rs.12/- per day. Workman was not interviewed for regular appointment. That appointments of sub staff are made after publication in newspaper calling names from Employment Exchange. Management's witness has stated that workman was engaged for 2-3 hours per day. In his cross-examination, management witness says from 13-7-09, he is working in State Bank of India, Ranjhi branch. Earlier he was not working in said branch. He was unable to tell since what time, the workman was working in Bank. As per record, he has given evidence. In his further cross-examination, workman has admitted documents referred to him at page 38, 39, vouchers at Page 13 to 23 are of his Bank. The vouchers about payment of bonus are of the Bank. The experience certificate is issued by Bank shows temporary employees. The documents at Page 10 to 12, 37, 41 to 44, 45 to 47 referred to witness are also of the Bank. However any employee was not regularized during his working period.

11. The document Exhibit W-1 is reply submitted to ALC, office. Exhibit W-2 A, 2B, 2 C shows amount paid to workman. Exhibit W-3 is experience certificate issued to workman. The period is shown 26-12-88 to 25-2-89, workman was working. The wages are shown 1026/- in Exhibit W-4 working of workman on wages Rs.12/- 15/-, 20/- 25/- during the intermittent period 1-10-89 to 14-8-93. Exhibit W-5 also shows payment of wages at similar rate to the workman during October 1989 to May 1996. Working days are shown 284 days in 1994, 300 days in 1995, 295 days in 1996. Document Exhibit W-6, 7 shows payment of wages time to time of the workman.

The workman has produced agreement with Union Annexure PR-4 at Page 103. Managing Director, State Bank of Indore was party to said agreement. One of the agreement is material, it provided that after discussion it was agreed that (i) an agreement be entered into between the management of Associate Bank and SSBEA for payment of back wages to eligible temporary employees on the same lines and had been done in the State Bank of India and all other cases filed by the Association/ individual employees before the conciliation officer/ industrial tribunal/ court or any other authority in this regard be withdrawn., (ii) all temporary employees would be subjected to a written test and/ or interview, as the case may be, before they were absorbed in permanent service, and they would appear in the written test/ interview after they withdrew their cases for back wages pending before the Court etc., (iii) protected employees who fail to qualify in he onsuing test would be continued in temporary service, and (iv) cases for permanent absorption and / or back wages would be considered in respect of those temporary employees whose services had been terminated on or after Ist January 1975.

Workman has also produced copy of Circular dated 28-4-89. Learned counsel for workman has submitted written notes of argument instead of arguing he matter before Court. Above circular dated 24-5-78 clearly contemplated absorption of temporary employees. Workman is not given its benefit and therefore the denial of regularization of workman is not legal. For above reasons, I record my finding in Point No.1 in Negative.

12. **Point No.2-** workman needs to be considered for regularization if his service is as per various settlements and agreements between Banks management and Union. Learned counsel for IInd party relies on ratio held in :

Case of Hindustan Petroleum Corporation Ltd. Versus Ashok Ranghba Abmre reported in 2008(2) Supreme Court Cases 717. Ratio held in above cited case is that illegal termination as violative of section 25-F doesnot necessarily follow that workman is entitled to status of permanency and claim of regular pay scales and other benefits based on permanency.

Next reliance is placed in case of Mahboob Deepak Versus Nagar Panchayat, Gajraula and another reported in 2008(1) Supreme Court Cases 575. Ratio held in the above cited case deals with termination of service of daily wager having completed 240 days of continuous service in a year. Service terminated on grounds of misconduct for financial irregularities without complying Section 6-N of UP Industrial Disputes Act. The Appellants claiming for regularization held not sustainable.

The facts of the present case are not comparable. Any kind of misconduct is not alleged on part of workman rather workman was not given benefit of circular dated 24-5-78. Workman was not called for interview or test for purpose of absorbing him in permanent service. Therefore the action of the management cannot be upheld. For above reasons, I record my finding in Point No.2 in Negative.

13. Though workman has filed proceeding under Section 33-A of I.D.Act contending that his service are terminated in the year 2003. Evidence of workman shows that he is still working with Bank on daily wages. He is paid Rs.120/- per day. It appears that workman is still in employment of IInd party. No document is produced by management about termination of service of workman. The proceeding under Section 33-A of I.D.Act therefore is not tenable. However in view of my finding in Point No.1 that workman was denied benefit as per settlement of 1978, the action of the management is not proper and legal. For above reasons, I record my finding in Point No. 3 in Negative.

14. For the reasons discussed above, workman deserved consideration for absorption as permanent employee of the Bank as per circular of 1978. Accordingly I record my finding.

15. In the result, award is passed as under:-

(1) The action of the management of State Bank of Indore, Branch Ranjhi denying regularisation to workman Shri Mukesh Phoolchand Agarwal is not legal and proper.

(2) IInd party is directed to consider workman for absorption as permanent employee of the Bank as per circular dated 24-5-78 or any there agreement/ settlement between management and Union. The proceeding under Section 33-A is rejected.

Action be taken within 3 months from the date of publication of award.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 140/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/510/98-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/ 99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute

between the management of State Bank of India and their workmen, received by the Central Government on 16/07/2014

[No. L-12012/510/98-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/140/99

Presiding Officer : SHRI R.B.PATLE

Shri Ram Singh
S/o Govind Singh,
R/o Vill & PO Basaiya,
Distt. Morena (MP) .....Workman

Versus

The Asstt. General Manager,
State Bank of India,
Zonal Office, Hamidia Road,
Bhopal (MP) .....Management

AWARD

(Passed on this 21st day of May, 2014)

1. As per letter dated 22-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/510/98-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of Asstt. General Manager, State Bank of India, in terminating the services of Shri Ram Singh, S/o Govind Singh w.e.f. 31-10-97 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/4. Case of workman is that he was appointed as messenger on 5-5-87. He was continuously working from 1-5-87 to 31-10-97 with IInd party Bank. That he was working for more than 10 years with the IInd party. He is covered as employee under Section 25(B) of I.D.Act. IInd party Bank is a statutory organization established under SBI 1955. The work performed by Ist party workman is of permanent nature. Post were available. There was need of hands in establishment of IInd party. There was no justification in continuing workman as employee or not regularizing his services. That SBI adopted policy for regularizing services of daily wagers. Workman was called for interview on 24-10-92. He appeared before selection committee but result was not communicated to him. That some other persons were secretly appointed in April 1997 and services of workman were illegally terminated. That workman was working as a regular messenger since his initial appointment. It is clear from inspection of board, the services of workman were illegally terminated which amounts to retrenchment. That the workman is unemployed after termination of his service. On such grounds, workman is praying for his reinstatement with back wages.

3. IInd party filed Written Statement at Page 9/1 to 9/9. IInd party submits that Ist party workman was employed casually during 1987 to 1997. The working days of workman during said period given in Para-1 of the Written Statement. The total working days of workman were 458 days. Workman was engaged as per exigencies. Discontinuation of his services is covered under Section 2(oo)(bb) of I.D.Act. it doesnot amount to retrenchment. It is reiterated that the workman was intermittently engaged and wages were paid to him. Workman was not in continuous service. Workman had not completed 240 days continuous service during any of the year. Workman was called for interview on 6-11-92 in pursuance of bipartite settlement dated 17-11-87, 16-7-88, 28-10-88 & 9-1-91. Workman was not found suitable for appointment. His name was not included in the select list and workman is not entitled to reinstatement. Claim of workman is about violation of Section 25-H of I.D.Act, Rule 77, 78 of I.D.Act. The termination of workman is not illegal as alleged. On such ground, IInd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Asstt. General Manager, State Bank of India, in terminating the services of Shri Ram Singh, S/o Govind Singh w.e.f. 31-10-97 is justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief claimed.

REASONS

5. The term of reference clearly relates to legality of the termination of service of workman, it doesnot relates to regularization of his service. Workman has pleaded that he was continuously working as messenger from 1-5-97 to 31-10-97. IInd party had denied above contention of workman. As per IInd party, workman was intermittently engaged as per exigency from 1987 to 1999. Working days of workman were 19, 38, 31, 4, 80, 53, 50, 39, 50, 46 & 48 during 1987 to 1997 respectively. Workman in his affidavit of evidence has stated that he was continuously working from 1-5-87 to 31-10-96. He completed 240 days continuous service during each of the year. His services were orally terminated. The Bank had called him for interview for regularization of daily wage employees. In his cross-

examination, workman says that he was working in Bathaiya branch, Distt. Morena. He worked since 1987 for 10 years. He was doing work of filling water. He was also doing other works. He had submitted application to the Branch Manager. When there was no messenger, he used to be called. When the messenger was proceeding on leave, he used to be reengaged. He received education upto 5th standard. He had produced certificate about working for more than 240 days. Date of birth is 1-7-63. However certificate about his working days is not produced on record. The evidence of workman is not corroborated by documents. No other employee is examined in support of evidence of the workman.

6. Management filed affidavit of its witness Shri Rakesh Baboo Gautam. Witness of the management has stated that documents are destroyed. The witness of the management has further stated about working days of workman during 1987 to 1997 were between 19 to 80 days. The workman had not completed 240 days continuous service during any of the year. In his cross-examination, witness of the management says that he was working at Basaiya Branch from May 2010 to May 2012. The letter sent to Head Office was seen by him. He has not seen attendance register, payment vouchers in respect of workman. He was unable to say the exact period the workman was working. He denies that workman completed more than 240 days in each year during 1987 to 1997. During his period, seniority list or daily wager employee was not prepared. That he had not preparing any seniority list of the employees. The evidence of workman is not corroborated by documents. His clear statement that he was continuously working for more than 240 days during each of the year 1987 to 1997 cannot be accepted. therefore the termination of service of workman cannot be said in violation of Section 25-F of I.D.Act. as the terms of reference are silent about regularization of workman in service, as per bipartite settlement, the point of regularization needs no detailed discussion. For reasons discussed above, I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

(1) The action of the management of Asstt. General Manager, State Bank of India, in terminating the services of Shri Ram Singh, S/o Govind Singh w.e.f. 31-10-97 is legal and proper.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2158.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 136/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/07/2014 को प्राप्त हुआ था।

[सं. एल-12012/471/98-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 136/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 16/07/2014.

[No. L-12012/471/98-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/136/99

Presiding Officer : SHRI R.B.PATLE

Shri N.K.Patel,
Dy. General Secretary,
State Bank of India Staff Congress, 5/235,
Pragati State Bank Staff Colony,
Vikasnagar,
Jabalpur .....Workman/Union

Versus

Asstt. General Manager,
State Bank of India,
Zonal Office, Marhatal,
Jabalpur .....Management

AWARD

(Passed on this 25th day of June, 2014)

1. As per letter dated 18-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/471/98/IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of State Bank of India, Region-II in not paying gratuity, pension, PF to Shri Shankarlal Chourasia from 19-9-67 to 5-1-89 during his temporary service is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of

claim at page 2/1 to 2/3. Case of workman is that he was working as temporary messenger in Kareli branch of IInd party Bank from 1967. The details of his working days are given. He worked for 92 days in 1967, 265 days in 1968, 275 days in 1969,255 days in 1970 & 242 days in 1971. That he worked more than 240 days during each of the year. That he was called for examination for the post of messenger in 1969, 1970, 1971 but he was not selected as he was found overage. However he was working as messenger from 1971, 1972 to 1982. Again he was working as temporary messenger in Kareli branch from March 1983. In 1986, he was called for interview for post of messenger. On 6-1-89, he was appointed as regular messenger. Earlier he was denied said post in 1969, 1970, 1971. After 20 years, he was appointed on the same post. That he was continuously working as messenger from 1967. He was retired from post of messenger. He was not allowed benefits of Provident Fund, Gratuity, Pension etc. workman claims those benefits with 18 % interest.

3. Management filed Written Statement at Page 5/1 to 5/10. Claim of workman is opposed. Preliminary objection is raised that the reference is not tenable. Shri N.K.Patel raised dispute on behalf of workman. He was dismissed from service. He is not competent to raise any dispute. Workman is claiming regularization from 1967. It is submitted that workman was engaged on daily wages on posts depending upon exigencies of work. The details of working days of workman are shown as 92 days in 1967, 265 days in 1968, 275 days in 1969,255 days in 1970 , 242 days in 1971, 180 days in 1972, 150 days in 1973, 135 days in 1974, 110 days in 1975, 108 days in 1976 & 21 days in 1977. That workman was engaged from 1-3-83 to 5-1-89 for 5 years, 10 months, 5 days. On 6-1-89, workman was appointed as permanent messenger. Workman was given retiral benefits on 1989. It is reiterated that workman was not permanent employee, his engagement was casual, he was not entitled to regularization. As per settlement of 1987, he was appointed as permanent messenger. It is submitted that Branch Manager has no power to appoint regular messenger. The procedure for appointment of regular messenger was not followed therefore workman is not entitled for regularization. Employee who complete minimum 10 years service is entitled to pension. Workman was allowed pensionary benefits considering his service from 6-1-1989 to 29-8-99. All other adverse contentions of workman have been denied. It is reiterated that merely working for 240 days in calendar year doesnot give right of permanent employee to the workman. Only after appointment, selection as per recruitment rules gives right of permanent employee to such employees. Applicant's claim for regularization raised at earlier point was not accepted. It is submitted that workman is not entitled to Provident Fund, Pension, Gratuity claimed by him.

4. Workman has filed rejoinder at Page 7/1 to 7/2. Workman has contented that he was working as messenger from 19-9-67 as per provisions of Miscellaneous Provisions Act, he is entitled to the provident Fund. It was necessary on part of the IInd party to deposit his contribution of Provident Fund. IInd party has violated said act. Workman is entitled to gratuity for the years he had completed 240 days continuous service.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of State Bank of India, Region-II in not paying gratuity, pension, PF to Shri Shankarlal Chourasia from 19-9-67 to 5-1-89 during his temporary service is legal and justified?	Partly Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. The substance of pleadings of workman is that he was working as temporary messenger from 1967 to 1989. He was not allowed benefit of Pension, Gratuity and Provident Fund. Despite he was continuously working. That he had completed 240 days continuous working. He was not given benefit of gratuity for those years. Claim of workman is denied by IInd party contending that workman is claiming benefit of regularization. Workman was engaged as temporary casual employee.

7. Workman filed affidavit of his evidence covering most of his contentions in Statement of claim. He was working from 1969. He was appointed as permanent messenger on 6-1-89. He was denied benefits of Pension, Gratuity and Provident Fund. He claims to be entitled for all those benefits. In his cross-examination workman says he was appointed as regular messenger on 5-1-89. After six months, he was confirmed. He was receiving full pay from 5-1-89. He was appointed as messenger/watchman. That he completed 240 days continuous service during 1980-85 and 85 to 89. However he has not pleaded the same in statement of claim. He has not stated in his statement of claim that he completed 240 days service during 1985 to 1989. In Written Statement filed by management and statement of claim filed by workman, working days are shown. Evidence of management's witness Shri Vinayak Wagle has also shown working days of workman 92 days in 1967, 265 days in 1968, 275 days in 1969, 255 days in 1970, 242 days in 1971 etc. the evidence of workman about working days is not challenged in cross-examination of management's witness. Written Statement filed by management is further clear that workman was engaged from 1983 to 15-1-1985 for 5 years, 10 months, 5 days. The management's witness in his cross-examination says that in Bank, Provident Fund

is deducted from only those employee who is confirmed in the Bank. He claims ignorance whether SBI has obtained exemption from PG. Act. The service of workman was considered from 6-1-1989. His earlier period is not counted. Management's witness was unable to tell the period of working of workman from 1969 to 1989. In his further cross-examination, management's witness says that documents relating to workmen were not destroyed by the Bank. The documents were destroyed prior to he had take charge. The management's witness denies that he had seen record and deliberately not produced in Court. Witness says temporary employees are not entitled to gratuity. There is order in Bank that PF is deducted only when employees are confirmed in the Bank. Those orders are not produced in the Court.

8. There is no dispute that the workman was appointed as permanent messenger on 6-1-1989. Parties are in dispute about claim of Ist party workman for pension, Gratuity and Provident Fund for the period 1967 to 15-1-1989. Management claimed that temporary employees are not entitled to gratuity. In Section 2(e) of Payment of Gratuity Act, 1972, employee is defined.

Employee means any person (other than apprentice) employed on wages in any establishment , factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semiskilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity but doesnot include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

From above definition, it is clear that no difference is made between permanent or temporary employees, only apprentice has been excluded from definition of employee. The continuous service defined under Section 2(a) of Sub Section 2(ii) the employees completed 240 days service.

Section 4 of Payment of Gratuity Act provides – gratuity shall be payable to an employee the termination of his employment after he has rendered continuous service for not less than 5 years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease. Provided that the completion of continuous service of 5 years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

Considering above provisions employee completing 5 years service irrespective of the fact that employee is temporary or permanent, the employee is entitled to gratuity. The amount of gratuity is provided under Section 4(4), 15 days wages for an year or part thereof in cases of six months.

9. Learned counsel for Ist party workman relied on ratio held in

Case of Shri Y.K.Singla versus Punjab National Bank and others reported in 2013(3) Supreme Court Cases 472. Issue held in above cited case relates to interest on delayed payment of gratuity under Section 7(3a) that the employee has right to make the choice governed by any other alternative provision/instrument so as to be entitled to get protection of better terms of gratuity envisaged under Section 4(5) of Payment of Gratuity Act. The ratio held in case has no direct bearing to case at hand.

10. Learned counsel for IInd party management Shri Vijay Tripathi submits that temporary employee is not entitled to benefit of gratuity, Provident Fund, Pension. Learned counsel relies on ratio held in case of State Bank of India versus Kannaiah and others reported in 2004-1-SCC-315. The ratio held in the case deals with the point of cut off date. There is no rationale to fix cut off date. The Bank has to decide eligibility for new benefit. The ratio has no direct bearing to the controversy between parties.

11. Considering provisions of Section 4 of Payment of Gratuity Act, the definition of employee, no difference is made between temporary or permanent employees. Workman is entitled to payment of gratuity for the year he had completed continuous service for more than six months. As per pleadings and evidence, workman has pleaded 240 days continuous service in 1968, 1969, 1970, 1971 and more than six months in 1972. He had completed continuous service from 1968 to 1988 for 5 years. Thus workman is entitled to payment of gratuity for 1968 to 1972- 5 years and 1983 to 1988 – 5 years: Total 10 years. Gratuity is payable 15 days wages for completed one year service. Thus the workman is entitled to payment of gratuity for 150 days.

12. So far as claim of workman for payment of Provident Fund is considered, Section 2(f) of Provident Fund Act 1952 provides-

Employee means any person who is employed for wages in any kind of work, manual or otherwise in or in connection with the work of an establishment, and who gets his wages directly or indirectly form the employer and includes any person

(i) Employed by or through a contractor in or in connection with the work of the establishment;

(ii) Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment.

Above definition doesnot make difference between temporary or permanent employee.

Section-6 provides-

The contribution which shall be paid by the employer to the Fund shall 10 % of the basic wages,

dearness allowance and retaining allowance if any, for the time being payable to each of the employees whether employed by him directly or by or through a contractor and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may if any employee so desires and if the scheme makes provision therefore, be an amount not exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section."

Though the evidence shows that workman was working as temporary messenger from 1967, workman have not paid any contribution towards Provident Fund therefore the IInd party employer is not obligated to pay the contribution towards Provident Fund. The Bank has framed employees pension rules.

As per Rule-8, it is provided that no employee shall be eligible to become member –

(a) If he is a member of the Imperial Bank of India Employees Pension and Guarantee Fund or if he is engaged in any country outside India and appointed for service in such country,

(b) If he is below 21 years of age,

(c) If he is over 38 years of age.

Rule-9 provides subject as hereinafter provided every employee shall as from the date of his admission to the fund, contribute to the fund every month an amount equal to five percent of his salary subject to a maximum contribution of Rs. 90 per mensem. In respect of any period in which the full salary of an employee is not payable to him, his contributions shall be calculated on his reduced salary if any. The contributions shall be made by deduction from salary and shall cease when an employee ceases to be in pensionable service in terms of Rule-20.

13. The pleadings and evidence of workman shows that he was not member of the Employees Pension, he has not contributed amount to the pension, therefore workman cannot claim benefit of pension. For above reasons, I record my finding in Point No.1 in Partly Negative for non-payment of gratuity to the workman.

14. Point No.2- in view of my finding in Point No.1, workman had completed continuous service from 1968 to 1972 and 180 days in 1973. He was continuously working from 1983 to 1988 for 5 years. He was not paid gratuity for 6-10 years which comes to wages for 150 days. Workman is not entitled to Provident Fund, pension for the reasons discussed above. Workman is entitled only for Gratuity for 150 days. Accordingly I record my finding in Point No. 2.

15. In the result, award is passed as under:-

(1) The action of the management of State Bank of India, Region-II in denying payment of Gratuity to the workman Shri Shankarlal Chourasia is not proper and legal.

(2) IInd party is directed to pay Gratuity of 150 days wages to the workman at the rate of wages last drawn.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2159.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डवलपमेंट क्रेडिट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 4/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/05/2014 को प्राप्त हुआ था।

[सं. एल-12025/01/2014-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Development Credit Bank Ltd., and their workmen, received by the Central Government on 07/05/2014.

[No. L-12025/01/2014-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 11th day April, 2014

INDUSTRIAL DISPUTE L. C. No. 4/2005

Between :

Sri Suleman S. Panjwani,
S/o Sri Sadruddin G. Panjwani,
R/o H.No. 5-8-591/A/1 to 13,
Flat No.2-B, Premier Enclave,
Mubarak Bazaar Lane, Abids,
Hyderabad – 1. .....Petitioner

AND

1. The Area Head South,
Development Credit Bank Limited,
Area Office, South, Prestige,
Meridian Annexe,
128 (31/1/), M.G. Road, Bangalore-560 001.

2. The Branch Manager,
Development Credit Bank Limited,
Secunderabad Branch,
9-1-125/3, Siddartha Plaza,
S.D. Road, Secunderabad. ....Respondents

Appearances:

For the Petitioner : M/s. Ch. Indrasena Reddy & D. Vilas, Advocates

For the Respondent : M/s. S. Prasada Rao, C. Bala Subramanyam, K. Bharathi & K. Satyamurthy, Advocates

AWARD

This is a petition filed by Sri Suleiman S. Panjwani who claimed to be a workman and who is Ex. Assistant. Officer of the Respondent bank, invoking Sec.2A(2) of Industrial Disputes Act, 1947 seeking for setting aside the dismissal order dated 23.11.2004 passed by the first Respondent, holding the same as illegal and arbitrary and contrary to the provisions of Industrial Disputes Act, 1947 and to grant him the relief of reinstatement into service, full back wages, continuity of services, due promotions with all other attendant benefits including notional increments.

2. The averments made in the petition in brief are as follows:

Petitioner joined the service of the 2nd Respondent on 31.12.1994 and put in continuous and unblemished record of service till the date of service of the impugned dismissal order dated 23.11.2004. While dismissing the Petitioner from service Respondent has not taken into consideration his past conduct length of service, the gravity of the misconduct alleged to have been proved against him. The punishment of dismissal from service is shockingly disproportionate and do not commensurate with the gravity of misconduct alleged to have been proved against him. The action taken against the Petitioner is illegal, unjust, contrary to law and provisions of the Industrial Disputes Act, 1947 and also in violation of principles of natural justice. the last drawn salary of the Petitioner was Rs.18,300 pm excluding other perks. As on the date of his dismissal he was working as Assistant Officer, and his functional designation was Relationship Manager. Nature of his duties were to extend the services to the customers of high net worth individuals and to help for their requirements. Since he was the senior employee in the 2nd Respondent most of the customers knew him as relationship manager, he has to maintain good relation with customers and he is to look after the business and branch operations also as per the instructions of the 2nd Respondent and other higher officers of the bank. He helped the Respondent bank. In retaining huge existing deposits of the customers and put in good record of service. He received awards for best performance number of times. Thus, he is sincere hardworking and profitable employee of the 2nd Respondent. Though, he was designated as Asst. Officer/Relationship Manager he was not having any managerial powers. He was neither appointing authority nor Disciplinary Authority nor leave sanctioning authority. He was not having any delegating powers and supervisory powers. He was working under the control of 2nd Respondent. Therefore, he comes under the purview of the workman as defined under Sec.2(s) of the Industrial Disputes Act, 1947 and the Respondent bank is an industry as per Sec.2(j) of Industrial Disputes Act, 1947. Thus, this court got jurisdiction to entertain this case. On 1.9.2004, 1st Respondent issued a show-cause notice of punishment to the Petitioner alleging that he has helped a walking customer in opening a fictitious current account in the name of M/s. Bright Computers and facilitated committing of fraud on the bank to the extent of Rs.29 lakhs approximately. Petitioner submitted his explanation on 3.9.2004 explaining the actual facts and duly denying the allegation levelled against him as false, baseless and incorrect. Without mentioning any provision, straight away 1st Respondent issued show-cause notice proposing some punishment which is contrary to law and also in violation of principles of natural justice. without considering the explanation properly 1st Respondent passed the penalty order on 14.9.2004 confirming punishment proposed in their first notice. No domestic enquiry was conducted in the matter giving any opportunity to the Petitioner. Straight away penalty was imposed, withholding of performance allowance and reversion to Asst. Officer Grade to Senior Asst. Officer. But his functional designation was not changed. This action is illegal, unjust and contrary to law and also in violation of principles of natural justice. Further, on 12.11.2004 again 1st Respondent another penalty order proposing the capital punishment of dismissal from service instead of the penalty imposed vide order dated 14.9.2004 for the same alleged misconduct. Petitioner submitted his reply once again, denying the truth of the allegations levelled against him and explaining the actual facts and circumstances of the case. But, without considering the same 1st Respondent passed final penalty order on 23.11.2004 confirming the proposed penalty of dismissal from service. This penalty was imposed for the same alleged misconduct for which Petitioner was already punished vide order dated 14.9.2004 which amounts to double jeopardy which is not permissible under law. Further, the alleged misconduct does not constitute any misconduct. Helping a walking customer in opening a

current account is not a misconduct. It is only part and parcel of duty of the employee of the bank. Petitioner has not committed any misconduct. If he committed any misconduct Respondents would have definitely conducted domestic enquiry into the matter. Without conducting any such enquiry and without giving reasonable opportunity to the Petitioner to defend himself basing on alleged information given by the police, 1st Respondent has taken action and imposed the penalty of dismissal from service. The alleged information given by police was not proved either before the Enquiry Officer or before the Criminal Court. Admittedly criminal proceeding in the matter is pending before the Criminal Court. In any view of the matter procedure adopted by the first Respondent in dismissing the Petitioner is illegal, unjust and contrary to law and violation of mandatory procedure required to be adopted for taking disciplinary action against an employee. The allegation that police have recovered an amount of Rs.2,50,000 from the residence of the Petitioner is not correct. The amount recovered belongs to his joint family. It was taken by his father as a loan from Ismalia Cooperative Credit Society Ltd. and part of that amount was taken as loan from LIC policies. Petitioner never committed any misconduct and he never got any malafide intention to appropriate or misappropriate the legitimate revenue of Respondent bank. After illegal dismissal from his service he approached the Respondents with a request to reinstate him into service but in vain. Hence, this petition. He got old aged parents, wife, three months kid, married younger brother and sister in law in his joint family, for whose maintenance he used to contribute substantial share. Due to his illegal dismissal from service his entire family is on streets facing hardships.

3. Respondents filed their counter with the averments in brief as follows:

This dispute is not at all maintainable either under law or on facts. Petitioner is not a workman as defined under the Industrial Disputes Act, 1947 and rules made there under. Nature of duties performed by him at Secunderabad branch of the bank are of managerial in nature as he was discharging the duties of Relationship Manager-cum-Manager-Customer service of the branch. The duties enumerated to be performed by such official show that Petitioner was supervising the entire operations of the branch. As relationship manager he owns responsibility for 60% of the branches in house targets. He was also officiating as Branch Manager of the Secunderabad branch of the bank. His basic pay was Rs.13,244 and total gross salary was Rs.18,310 which he himself admitted. Since August, 2002 he was working as Relationship Manager admittedly. In October, 2002 he was designated as Relationship Manager of the Secunderabad branch, since 7.8.2004 he was officiating as Branch manager in the absence of regular Branch Manager. A fraud to the tune of Rs. 28,75,000 was committed on the bank by opening a fictitious account depositing foreign cheques and withdrawing the amount on realisation. On 31.3.2004 while the Petitioner was working as Relationship Manager at Secunderabad branch of the bank one Mohd. Qureshi approached him to open a current account and he was referred by the Petitioner to OBST(Outbound sales team). Since the account was for proprietary firm and the supporting document was for partnership the account opening form was returned to the party by the Petitioner. On 12.4.2004 same person approached the bank with account opening form along with a partnership deal in the same name. Again he was referred to OBST by the Petitioner. Whereafter, the account was opened. On 16.4.2004 a cheque for GBP(Great Britain Pound) 6150 drawn on HSBC, London was deposited for collection. The prescribed declaration for foreign inward remittance (Form No.2) as per Foreign Exchange Management Act, 1999 was not obtained. Said cheque was returned by the collecting bank on 30.4.2004 stating "Theft reported". The branch promptly send intimation of return of the cheque and debit advice for charges etc., to the account holder without making any enquiries despite the fact that the account was new. Thereafter, on 31.5.2004 a cheque for Euros 5020 drawn on Irish Nation Wide by Irish Nation Wide Banking Society and also a DD for Euros 48250 drawn on permanent TSB were deposited for collection. They were forwarded to regional processing centre for collection under Petitioner's signature on the tally sheet. Regional Processing Centre informed him at the branch to obtain letter clarifying the purpose of remittance. The account holder submitted a letter to him stating the purpose as "advance payment for purchase of Hard Disc and Panasonic Digital Camera" which was forwarded to Regional Processing centre without making any enquiry. The proceeds of the above said instruments were credited to the account by Regional Processing Centre on 15.6.2004 and the said cash was withdrawn over the counter on 15.6.2004, 16.6.2004 and 18.6.2004. A total amount of Rs.28,75,000/- was withdrawn. On 23.6.2004 the bank was informed by Swift message that all the instruments have been dishonoured for reason, "fraud cheque". Thus, the party fraudulently withdrew Rs.28,75,000 from the bank. It was also gathered that the account holders were always in touch with the Petitioner for opening the account in the name of proprietaryship and later in the name of partnership. As Relationship Manager had he been alert and made enquiries at various stages the fraud could have been averted. It was also gathered that one Mr. Prasad used to meet him for follow up of the cheques and collection and subsequently for heavy cash withdrawals. Without making proper enquiries Petitioner accepted the AOF and referred the account OBCT and thus facilitated the party

to open the account and further facilitated the party to fraudulently withdrawn large sums of money credited out of proceeds of bills collected. Besides he was also fully aware that the first instrument was reported to be a theft and the account holders frivolous reasons for foreign inward remittance should have alerted him and steps could have been taken to prevent the financial loss of Rs. 28,75,000 to the bank. The in house investigation revealed that Petitioner was responsible for facilitating the commission of fraud. On 2.11.2004 Petitioner was arrested by the Central Crime Station(CCS), Detective department, Hyderabad. Police also recovered a sum of Rs.2.5 lakhs from the Petitioner as per the letter dated 20.11.2004 addressed by the Police to the bank. It is also gathered that during interrogation Petitioner confessed before the police that he colluded with the gang comprising S/Sri Prasad, Sanjay and Qureshi to open the current account in the name of M/s. Bright computers and thereby facilitated commission of fraud on the bank to the extent of Rs.29 lakhs. Petitioner never revealed facts before the bank. He gave his reply basing on legal advice. There are improvements in his version from time to time. Bank gave a reasonable opportunity to him to explain and thereafter imposed punishment. It was felt that there was no need to hold enquiry since the inconsistent are so glaring and visible to the naked eye. The initial punishment was reviewed basing on the facts emerged subsequently. Petitioner is well aware of the facts and circumstances leading to passing of the impugned order and he is building up a legal case. Respondent bank is dealing with public money and is custodian of public money. A large sum was allowed to be fraudulently withdrawn from the bank and Petitioner is responsible for the same. Contentions of the Petitioner that he got unblemished record of service and that he was illegally dismissed from service are not correct. His further contention that punishment imposed is shockingly disproportionate to the gravity of the misconduct also is not correct. His contention that the action taken by first Respondent is illegal, unjust contrary to law and contrary to provisions of industrial dispute act and also in violation of principles of natural justice are all incorrect. Petitioner's version that as he is neither an appointment authority nor Disciplinary Authority nor leave sanctioning authority, he is a workman is not at all correct. This is a twisted interpretation given by him and is not acceptable. He is not a workman. Contention of the Petitioner that Respondent bank can not take any action against him while the criminal proceeding is pending is not correct. Petitioner is not entitled for any of the reliefs sought for. Petition is liable to be dismissed.

4. To substantiate the contentions of the Petitioner he examined himself as WW1 and got marked Ex.W1 to W10. For the Respondent Management MW1 and MW2 were examined and Ex.M1 to M7 were marked.

5. Heard either party.

6. The points that arise for determination are:

I. Whether the Petitioner is a workman and whether the present dispute is an industrial dispute entertainable by this court?

II. Whether the Petitioner is entitled for the reliefs sought for?

7. Point No. I:

It is the contention of the Petitioner that he is a workman whereas Respondent Management is vehemently denying the correctness of this contention. The workman is defined in Sec.2(s) of the Industrial Disputes Act, 1947 as follows:

> " 'workman' means any person(including an apprentice) employed in any industry to do nay manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or, as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—
>
> (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957) ; or
>
> (ii) Who is employed in the Police service or as an Officer or other employee of a prison ; or
>
> (iii) Who is employed mainly in a managerial or administrative capacity; or
>
> (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions, mainly of a managerial nature."

8. Now it is to be verified whether, the nature of employment of the Petitioner with the Respondent bank, as on the date of his dismissal from service falls within the purview of the above referred definition of the "workman". As can be gathered from the pleadings in this case and also the evidence adduced on record, by the date of arising of cause of action for taking action against the Petitioner by the Respondent bank, he has been working as "Senior Assistant Officer with functional designation as Relationship Manager cum Manager Customer Service".

9. It is the contention of the Petitioner that though the nomenclature of his designation spells 'Manager' he was not actually performing managerial duties and that he was

only working under the supervision of the Branch Manager and thus, he is a workman. Whereas, Respondent Management is relying upon Ex.M2 and M3, the job cards of Relationship Manager and Manager customer services respectively, in support of their contention that Petitioner was not a workman. As can be seen from these documents and also the other evidence adduced on record a Relationship Manager has to play a key role in all branch marketing efforts and events and also has to take responsibility for 60% of the branch in house target. He has to identify prospects of sales team and has to structure business solutions to meet customer requirements among other duties. As per Ex.M3, the job card of manager customer services the said official has to make final checking and approval of account opening forms and documents thereof. He is the custodian of stock of five leaf cheque books, ATM Cards returned undelivered, stock of unused pay orders/demand drafts. Further he has to handle ear-marking/freezing requests, deceased accounts, including disposal of claims etc.. He is responsible for ATM along with Head Cashier. He will be in joint custody of cash along with head Cashier. He is accountable for achieving of branch cross sales target and he will be in joint custody of security documents along with designated CSE, among other assigned duties. All these functions clearly spell that they are managerial and supervisory in nature.

10. It is an undisputed fact that Petitioner has been the Relationship Manager and also has been Manager of Customer Service. It is his own pleading. It is not the contention of the Petitioner that he was not entrusted with various tasks enumerated in Ex.M2 and M3. This shows the capacity in which Petitioner has been working with the Respondent bank. He has been attending to all key functions in the Management and functioning of the bank. At no stretch of imagination he can be termed as a workman, in the given circumstances.

11. Since, Petitioner is not a workman present dispute can not be termed as an industrial dispute and therefore it can not be entertained by this court.

This point is answered accordingly.

12. **Point No. II :**

In view of the finding given in Point No.I, present dispute is not an industrial dispute and therefore, Labour Court can not entertain this dispute and can not adjudicate the same. Therefore, for want of jurisdiction, this court is not going into merits and demerits of this case. Since, this court got no jurisdiction to entertain this case, Petitioner can not seek for any of the reliefs sought for, from this court.

This point is answered accordingly.

Result :

In the result, petition is dismissed.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 11th day of April, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Suleiman S. Panjwani	MW1: Sri Suraj Kumar Chowdhury
	MW2: Smt. Peri Nagamani

Documents marked for the Petitioner

Ex.W1: Photostat copy of appointment letter dt. 29.12.1994

Ex.W2: Photostat copy of show cause notice dt. 1.9.2004

Ex.W3: Photostat copy of explanation to Ex.W2 by WW1 dt. 14.9.2004

Ex.W4: Photostat copy of 1st punishment order dt.14.9.2004

Ex.W5: Photostat copy of appeal against Ex.W4

Ex.W6: Photostat copy of penalty order dt. 12.11.2004

Ex.W7: Photostat copy of explanation dt. 15.11.2004 to Ex.W5

Ex.W8: Photostat copy of Final penalty order dt. 23.11.2004

Ex.W9: Photostat copy of appeal against Ex.W7 dt. 10.1.2005

Ex.W10: Photostat copy of annexure-D of Bipartite settlement 1997-2000 between the Respondent Management and their workmen union.

Documents marked for the Respondent

Ex.M1: Photostat copy of lr. from Police to the Respondent No.2 dt. 20.11.2004

Ex.M2: Photostat copy of job card of Relationship Manager (RM)

Ex.M3: Photostat copy of job card of MCS(Manager Customer Services)

Ex.M4: Photostat copy of show cause punishment notice to WW1 dt.1.9.2004

Ex.M5: Photostat copy of reply to Ex.M4 by Petitioner

Ex.M6: Photostat copy of penalty order dt.12.11.2004

Ex.M7: Photostat copy of representation by Petitioner dt.15.11.2004 against Ex.M6.

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2160.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के

प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 58/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/07/2014 को प्राप्त हुआ था।

[सं. एल-41012/99/2007-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 30/07/2014.

[No. L-41012/99/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 58/2007

Ref. No. L-41012/99/2007 – IR (B-I) dated: 15.10.2007

BETWEEN:

Sri Suresh Chander S/o Late Lalla Nivasi
758, Back of Sabji Mandi
Mahavir Floor Mill, Bachhaarvan
Raibareli

AND

The Divisional Railway Manager
Northern Railway
Administrative Office, NE Rly.
Hazratganj, Lucknow

AWARD

1. By order No. L-41012/99/2007-IR (B-I) dated: 15.10.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Sri Suresh Chander S/o Late Lalla Nivasi, 758, Back of Sabji Mandi, Mahavir Floor Mill, Bachhaarvan, Raibareli and the Divisional Railway Manager, Northern Railway, Administrative Office, NE Rly., Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF DRM, NORTHERN RAILWAY, LUCKNOW IN REMOVING SRI SURESH CHANDER, HELPER KHALASI FROM SERVICE W.E.F. 18/12/2003 IS JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN CONCERNED IS ENTITLED?"

3. It is admitted case of the parties that the workman, Suresh Chander was working as Helper Khalasi under the control of Senior Section Engineer (C & W), Lucknow and he was issued major penalty charge sheet SF-5 dated 27.5.2002 for unauthorized absence for the period from 25.10.2001 to 20.02.2002. Shri P.K. Khanna, SSE, Charbagh was appointed Enquiry Officer, who submitted his enquiry report before the disciplinary authority with finding that the workman was guilty of unauthorized absence from duty. The Disciplinary Authority relying on the enquiry report passed removal orders vide dated 18.12.2003 against the workman. The workman preferred an appeal, which was rejected by the Appellate Authority vide order dated 13.09.2004. The workman also moved a review application before ADRM, which too was rejected vide order dated 14.12.2006.

4. It has been alleged by the workman that management of the railways neither appointed any Presenting Officer to present their case nor provided him proper opportunity to defend himself. It was further alleged that the enquiry was not conducted in accordance with the provisions of Rule 9 of the D & A Rules, 1968 and also that the Enquiry Officer neither recorded the workman's statement not provided him opportunity to adduce his defence witness. Besides it was alleged by the workman that the Enquiry Officer in his finding has mentioned that the unauthorized absence of the workman for the period 25.10.2001 to 29.12.2001 is proved; whereas in the charge sheet the alleged period of absence was 25.10.2001 to 20.02.2002, even then the Disciplinary Authority passed dismissal order dated 18.12.2003. The workman has also alleged that he was not given copy of findings of enquiry report and show cause notice before passing the impugned order of removal, in as much as, he was not offered opportunity of personal hearing before issuance of punishment order. Accordingly, the workman has prayed that the disciplinary enquiry should stand vitiated as it was conducted in violation of the principles of natural justice and impugned order dated 18.12.2003 be set aside with consequential benefits to him.

5. The management of the railways in its written statement has denied the allegations of the workman and has submitted that, under Rules, it was not mandatory for the management to appoint Presenting Officer in the present matter and the workman was afforded sufficient opportunity to defend himself. The enquiry was conducted following the norms laid down by the D & A Rules and that of principles of natural justice; and also that the Disciplinary Authority rightly passed the impugned order dated 18.12.2003 on the basis of findings of Enquiry Officer and there is no infirmity in it. Accordingly, the management has prayed that the claim of the workman is liable to be set aside without any relief to him.

6. The workman field rejoinder, reiterating his contentions, already made in the statement of claim.

7. The parties filed documents in support of their respective case and adduced oral evidence. The workman examined himself; whereas the management examined Shri Pradip Khanna, Enquiry Officer in support of their case. The parties availed opportunity to cross-examine each other's witnesses. Both the parties forwarded oral arguments in support of their contentions.

8. Heard authorized representatives of the parties and perused entire evidence on record.

9. Following preliminary issues were framed at the request of the parties vide order dated 03.09.2009:

(i) Whether the departmental inquiry was conducted in violation of principles of natural justice; and

(ii) Whether the findings of the Inquiry Officer was perverse?

After framing of preliminary issues the workman was called upon to adduce its evidence.

10. The workman examined himself whereas the management examined Shri Pradip Khanna, SSE, Inquiry Officer, in support of their stand on preliminary issue. After hearing arguments of the parties, preliminary issues were decided in favour of the workman vide order dated 14.12.2011, which reads as under:

> "The disciplinary enquiry was not conducted in accordance with principles of natural justice. As such, the issue No. 1 is decided against the management. The management of railway is afforded opportunity to prove the charges leveled against the workman before this Tribunal. Accordingly, the management is directed to file list of witnesses and reliance on 30.01.2012."

11. Accordingly, the case was listed on 30.01.2012 with direction to the management to file documentary evidence and list of witnesses in support of their charge sheet before this Tribunal. The management filed evidence of Shri Anant Lal, ADME (C&W), Northern Railway in order to prove the charges leveled upon the workman. In rebuttal the workman examined himself. The parties' witnesses were cross-examined by each other. The authorized representatives of the parties availed opportunity to argue their respective cases.

12. I have given my thoughtful consideration to the submissions of the authorized representatives, pleadings of the parties and entire evidence adduced by the either parties, documentary as well as oral.

13. It is the case of the management that the workman, Suresh Chand was found absent from his duties from 25.01.2001 when a vigilance check was conducted on 20.02.2002. Resultantly, disciplinary proceedings was initiated against him with issuance of penalty charge sheet SF-5 dated 27.5.2002 for unauthorized absence for the period from 25.10.2001 to 20.02.2002. It was argued by the authorized representative of the management that the workman was found absent from his duty during a vigilance check, without any formal leave application and sanction of the same by any a Competent Authority; hence, the punishment imposed upon the workman is just and proportionate.

14. Per contra, the workman has come up with the case that his alleged unauthorized absence was due to long illness of his family members, which caused mental agony to him and resultantly he could not take up his duties properly. It was also contended by the workman that he is not a habitual absentee and the punishment imposed upon him is harsh and disproportionate to the misconduct committed by him as he remained absent for 66 days only.

15. I have given my thoughtful consideration to the rival contentions of the parties and perused the evidence available on record in light thereto.

16. The management has examined Shri Anant Lal, ADME (C & W), N. Railway to prove the allegations made in the charge sheet. During cross-examination the management witness was confronted with the article of charges, paper No. 4/11 and it was stated in the charge sheet that the workman was alleged to have been absented from 25.10.2001 to 20.02.2002. It was further stated in the findings recorded on paper No. 4/14 that the official was found to be unauthorisedly absent from 25.10.2001 to 29.12.2001; but in the charge sheet the duration of absence mentioned was from 25.10.2001 to 20.02.2002. It was also stated that the concerned official who made above mistake in the charge sheet has been charge sheeted separately. It has been further admitted that the charge sheet was issued for absence from 25.10.2001 to 20.02.2002 but during inquiry it was found proved that the workman was unauthorizedly absent from his duty from 25.10.2001 to 29.12.2001 only.

17. Contrary the workman in his evidence has admitted that he remained absent from 25.10.2001 to 29.12.2001 i.e. for 66 days which was neither intentional nor deliberate but the same was due to unavoidable circumstances i.e. due to serious illness of his mother and his wife. In cross-examination he has also stated that he has never been a habitual absentee.

18. The management has tried to lead evidence to the effect that the workman was a habitual absentee; but the matter under scrutiny before this Tribunal is the charge sheet dated 27.05.2002, which reads as under:

"Annexure – I

> Article of charges on the basis of which D&AR action is proposed to be taken against Shri Suresh Chander, H-Kh, T.No. 667 working under Senior Section Engineer/C&W/Lko.

Shri Suresh Chander, H/Kh, T.No. 667 while working such committed irregularities as under:

During the vigilance check conducted on physical presence of staff/unauthorized absentee of staffs on dated 20.02.2002 in the office of SSE/C&W/LKO he was found unauthorized absent since/from 25.10.2001 to vigilance i.e. 20.02.2002 without any prior intimation to his superior i.e. concerned supervisor/SSE/C&W/LKO.

By the above act of omission and commission, Shri Sursh Chander, H/Kh, T. No. 667 failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant thereby contravened rule No. 3.1 (i) (ii) & (iii) of Railway Service Conduct Rules, 1966."

From bare perusal of the above article of charges it is crystal clear that the workman had been issued a charge sheet for absence from 25.10.2001 to 20.02.2002 but during inquiry it was found that dates were wrongly mentioned and in fact the workman was actually found absent from 25.10.2001 to 29.12.2001. There is no iota of evidence from any corner that the charge sheet was issued to the workman regarding his habitual absence as no record of previous absence was mentioned in the charge sheet nor any finding was given by the inquiry officer on this point. On vitiation of the inquiry by this Tribunal vide order dated 14.12.2011, the management was required to prove the charges leveled by it upon the workman vide charge sheet dated 27.05.2002, which is regarding one time absence from 25.10.2001 to 20.02.2002. Hence, as per procedure the management has not lead an evidence to prove the fact that workman was actually absent from 25.10.2001 to 20.02.2002, while the management's won witness viz. Shri Anant Lal, ADME has admitted that the workman remained absent only w.e.f. 25.10.2001 to 29.12.2001. This amounts to the admission that the period of absence shown in the charge sheet is not correct.

19. The workman has contended that the punishment laid down by the management is disproportionate as it is in excess to the actual misconduct committed by the workman. Hon'ble Apex Court in State of Punjab vs. Dr. P.L. Singia 2009 (121) FLR 770 (SC), dealing with unauthorized absence, has stated thus:

"Unauthorized absence (or overstaying leave), is an act of indiscipline. Wherever there is a unauthorized absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct."

The court further, while dealing with the concept of punishment ruled as follows:

"Where the employee who is unauthorizedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorized absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence."

20. In Chairman-cum-Managing Director, Coal India Limited and another vs. Mukul Kumar Choudhuri and others 2009 (15) SSC 620, Hon'ble Apex Court, after analyzing the doctrine of proportionality at length, ruled thus:

"19. The doctrine of proportionality is, thus, well-recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment is like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

Hon'ble Apex Court in the above case directed for reinstatement of the delinquent for the proved charges of unauthorized absence for a period of more than six months, being the punishment of removal unduly harsh and grossly in excess to the allegations; but withheld the back wage by the way of punishment for proved misconduct of unauthorized absence. The Court observed as under:

"21. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired

to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations."

21. In the instant case the workman had admittedly been unauthorizedly absent from 25.10.2001 to 29.12.2001for 66 days only of course without prior intimation to the high authorities and approval of the Competent Authority. The workman in his evidence has stated that his absence was neither intentional nor deliberate but it was due to some unavoidable and compelling circumstances prevailing in his family i.e. long illness of his mother and wife, which caused their death. There is no allegation from management that the workman was a habitual absentee and also there is no iota of evidence before this court that the workman was ever issued any other charge sheet for unauthorized absence.

22. Therefore, under the facts and the circumstances of the case and considering the law, it comes out that the punishment, imposed by the management upon the workman for proved/admitted unauthorized absence from 25.10.2001 to 29.12.2001 i.e. for 66 days is not only unduly harsh but grossly in excess to the allegations made in the charge sheet. Also, there is neither any allegation, in the charge sheet, that the workman was a habitual absentee nor there is any evidence on the record to the effect. Therefore, the punishment order dated 18.12.2003 is set aside; and the management is directed to reinstate the workman, Virendera Kumar, with all consequential benefits, except the 50 % back wages from the date of removal until reinstatement, by the way of punishment for his unauthorized absence.

23. Award as above.

Dr. MANJU NIGAM, Presiding Officer

LUCKNOW
10th July, 2014

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2161.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 67/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/07/2014 को प्राप्त हुआ था।

[सं. एल-41011/28/2007-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of North East Railway and their workmen, received by the Central Government on 30/07/2014.

[No. L-41011/28/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 67/2007

Ref. No. L-41011/28/2007-IR (B-I) dated: 14.12.2007

BETWEEN

Member Executive
North East Railway Shramik Sangh
C/o Sri D.P. Awasthi, 49, Tilak Nagar
Lucknow
(Espousing cause of Shri Jagdev Prasad)

AND

1. Senior Divisional Personnel Officer
North East Railway
Ashok Marg, Railway Karyalaya
Lucknow.

2. Senior Divisional Commercial Manager
North East Railway,
Ashok Marg, Lucknow.

AWARD

1. By order No. L-41011/28/2007-IR (B-I) dated: 14.12.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Member Executive, North East Railway Shramik Sangh, C/o Sri D.P. Awasthi, 49, Tilak Nagar, Lucknow and Senior Divisional Personnel Officer, North East Railway, Ashok Marg, Railway Karyalaya, Lucknow & Senior Divisional Commercial Manager, North East Railway, Ashok Marg, Lucknow for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF NORTH EASTERN RAILWAY, LUCKNOW IN NOT GIVING TEMPORARY STATUS TO SRI JAGDEV PRASAD S/O SRI RAM ASHREY AFTER COMPLETION 120 DAYS WORK OF

WATERMAN FROM 1.4.1976 TO 31.8.1976 AND ALSO NOT GIVING C.P.C. SCALE BENEFIT FOR THE SAID PERIOD, IS LEGAL AND JUSTIFIED? IF NOT, WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED TO?"

3. The case of the workman's union, in brief is that the workman, Jagdev Prasad was engaged as casual labour for the duration 01.04.1976 to 10.04.1974 and thereafter, he was re-engaged w.e.f. 04.05.1976 and worked continuously up to 31.08.1976, completing 120 days continuous services. It is submitted by the union that the workman by the virtue of Rule 2501 became entitled to attain temporary status on completion of 120 days continuous working on 31.08.1976; but the management of railway did not grant him temporary status up till 01.04.1985. It is alleged by the workman's union that the action of the management of not granting him temporary status on 31.08.1976 caused him monetary loss, as he was not given CPC scale of Rs. 196-232 and this loss cumulated in subsequent years when he was not allowed increments and subsequent scales. It is also alleged by the workman's union that the other junior workmen were regularized by the management, sparing the workman in spite of the fact that he appeared in the screening test on 08.08.89 and also passed medical test on 12.10.89. Accordingly, the workman's union has prayed that the workman be given temporary status w.e.f. 31.08.76 on completion of 120 days of continuous working and he may be held entitled for payment in the scale Rs. 196-232 and other consequential benefits.

4. The management of the North Eastern Railway has denied the allegation of workman's union that by filing its written statement; wherein it has submitted that the workman, Jagdev Prasad was engaged as casual waterman in summer season on daily wages on 01.04.76. It is submitted that at that time there was no provision for giving time scale to such daily wagers engaged in summer season; whereas the same was extended vide letter dated 25.01.85 of the Railway Board; and accordingly, the workman was given benefit of time scale w.e.f. 01.04.85. It is submitted by the workman that the workman was successfully screened against panel dated 30.08.90 and accordingly, was regularized w.e.f. 22.10.92. It is also submitted by the management that the claim of the workman that he got temporary status w.e.f. 01.04.85 is wrong; as a workman gets temporary status on completing 120 days working after grant of time scale. Hence, the workman is not entitled for grant of temporary status even w.e.f. 01.04.85. Accordingly, the management has prayed that the claim of the workman's union be rejected being devoid of any merit.

5. The workman's union has field its rejoinder; wherein it has reiterated the averments already made in the statement of claim and has introduced nothing new.

6. The workman's union has filed documentary evidence in support of their case; whereas the management has filed none. The workman's union produced the workman in evidence who was cross-examined by the authorized representative of the management. The management has not forwarded any evidence, in spite of ample opportunities being forward to it, and accordingly the case was fixed for arguments. The management again did not turn for arguments whereas the authorized representative argued his case.

7. Heard representatives of the workman's union only and perused entire evidence on record and gone through respective pleadings of the parties.

8. The authorized representative of the workman's union has argued that the workman was entitled to grant of temporary status w.e.f. 31.08.76 when he completed 120 days continuous working as casual labour vide Rule 2501; but the management granted the same w.e.f. 01.04.1985 which resulted into non-grant of scale of Rs. 196-232. It also contended that the management regularized other juniors ignoring the fact that the workman was successfully screened on 08.08.89 and passed the medical test also on 12.10.89.

9. Per contra, the management's case is that the workman was actually given time scale w.e.f. 01.04.1985 as per directions of the Railway Board's order dated 25.01.85; however he was successfully screened vide panel dated 30.08.90 and was accordingly regularized w.e.f. 22.01.92.

10. I have given my thoughtful consideration to the submissions of the authorized representative of the workman's union, pleadings of the parties and entire evidence adduced by the workman, documentary as well as oral.

11. The workman's union has come forward with a case that the workman was engaged as seasonal casual labour and worked continuously for 120 days and was entitled for temporary status from a date prior to the date when he was granted temporary status. The management has denied the claim of the workman union, therefore, the burden was on the workman's union to prove their case that after engagement of the workman as seasonal casual labour he worked continuously for mandatory 120 days continuously required for grant of temporary status. The workman has pleaded that he was given temporary status w.e.f. 01.04.1985 and was granted scale Rs. 196-232; but from the reply of the management it is clear that the workman being seasonal casual labour was not permissible for grant of time scale under rules at that time and subsequently the time scale was granted to the seasonal casual labourers in terms of letter dated 25.01.1985 of the Railway Board and accordingly, the workman was granted time scale w.e.f. 01.04.1985, to which the workman is taking his date of grant of temporary status. The workman has not filed any reliable detail of working with the management as casual labour i.e. Casual Labour Card to ascertain this fact that he worked for 120 days continuously

as casual labourer and was actually entitled for grant of temporary status w.e.f. 31.8.76 in terms of Rule 2501 as claimed by him.

12. The workman has come up with a case that after grant of temporary status was subjected to screening test on 08.08.89 and also passed the medical test on 12.10.89 even then he was not regularized whereas other workmen junior to him were regularized. Admittedly, the workmen viz. Bhagwane, Shatrughan Sinha, Brahmshankar Mishra were regularized on the result of screening held; but the workman in his cross-examination has stated that he passed the screening held on 08.08.89 and he was found unfit in the medical. This goes to show that the management rightly did not regularize his services as he could not fulfill the norm for regularization. On the contrary the workmen viz. Bhagwane, Shatrughan Sinha, Brahmshankar Mishra and others who are claimed to be junior to the workman were regularized consequent to their clearing the screening test and medical test. The workman has not given any details regarding their date of joining to ascertain this fact that the claimed workmen were actually junior to the workman. Also, when the alleged juniors passed the screening test and medical test, they were got regularized; whereas the workman as spared for not clearing the medical test, therefore, the workman cannot claim parity with those who cleared the medical test. Hence, the case of the workman is different with respect to those who are claimed to be junior to the workman.

13. Thus, from the discussions made hereinabove, it is clear that the wokman's union did not discharge the burden that lied upon it and failed to prove its pleadings by cogent evidence, therefore, I come to the conclusion that action of the management of North Eastern Railway, Lucknow in not giving temporary status to the workman after alleged completion of 120 days is neither illegal nor unjustified. Accordingly, the workman concerned is not entitled for any relief.

14. The reference is answered accordingly.

Dr. MANJU NIGAM, Presiding Officer

LUCKNOW

09th July, 2014

नई दिल्ली, 30 जुलाई, 2014

का.आ. 2162.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 102/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/07/2014 को प्राप्त हुआ था।

[सं. एल-12011/1/2003-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th July, 2014

S.O. 2162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 16/07/2014.

[No. L-12012/1/2003-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM~LABOUR COURT, JABALPUR

NO. CGIT/LC/R/102/2003

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Raj Kumar Rai & 7 others,
S-107, Near Kopal School,
Nehru Nagar,
Bhopal (MP) .....Workman

Versus

The Asstt. General Manager,
State Bank of India,
Zonal Office, Hamidia Road,
Bhopal (MP) .....Management

AWARD

(Passed on this 20th day of May 2014)

1. As per letter dated 27-5-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-12011/1/2003-IR (B-I). The dispute under reference relates to:

> " Whether the action of the management of Asstt. General Manager, State Bank of India, Zonal Office, Bhopal in terminating the services of the workmen (as listed in Annexure I against their date of termination) is justified? If not, to what relief these workmen are entitled for?"

2. After receiving reference, notices were issued to the parties. on behalf of Ist party No.l to 8, statement of claim is filed at pages 5/1 to 5/9. Workman Bhopal Singh Negi Ist party No.l/3 died during pendency. His LRs are not brought on record. The case of workmen is that they belong to family with humble background. They received education with difficulties. They claim to be qualified to be appointed as Class-III, IV cadre of IInd party. That they were engaged at different branches during 1985, 86, 86 temporarily against vacant sanctioned post of messengers. On basis of regular need to work and requirement, those employees were working against sanctioned post of

messengers in different branches. The post of messengers were advertised after fulfilling qualifications and conditions as per advertisement, they were eligible to be appointed. The Ist party workmen were working more than 30 days in temporary employment during each of the calendar year. They were called for interview on 20-9-89 and 23-9-89. IInd party Bank published handbook on staff matters. As per Chapter 12 Para 3.2 the chance was to be given to the temporary employees for permanent employment. The candidates found unsuitable for selection and be discontinued immediately. That Ist party workmen were not communicated about their unsuitability, they were hopeful that they were selected after interview. They were waiting for the appointments. After their interview for post of messengers, staff circular dated 9-9-92 confirmed that the select list prepared after interview in 1989 was kept alive. Temporary employees selected in the list would be taken in service. It is further submitted that since the date of interview, Ist party were reiterating that they should be regularized in cadre of messengers. Their representations in the matter were not considered since past 10 years. Workmen were selected in previous interview. They were assured that they were not required to face interview again as per letter dated 10-2-97. Ist party workmen were never communicated about their unsuitability after the interview. It is reiterated that the workmen were not appointed against permanent post of messenger for the post they were interviewed. They were assured continuation of services until regular posting. That fresh candidates who were not working on daily wages for one single day were appointed namely Dal Bahadur, Anil Kumar Kanchedi Lal , Baboolal Sharma.

3. The Ist party workman apprehended termination of their service as per staff circular dated 18-9-98. They filed miscellaneous petition before Hon'ble High Court on 9-11-01. Said petition was disposed issuing certain directions. The directions were not complied by IInd party. It is further submitted that the settlement was entered between the management and employees for absorption of temporary employees classified as A,B,C in 1998. Another agreement was entered in 1991 which extended the period of anticipating vacancies from 1988 -92 to 1995-96. Personnel Officer of IInd party merely asked them to write sterio type form about working days before 1994. The directions were not complied. Writ Petition No. 2404/00 & 3696/00 were filed. It was brought to the notice of Hon'ble High Court that after termination of 450 persons, about 50 persons were appointed. Workmen further submits that they worked for more than 7 years, their services were terminated and junior employees were regularized. On such ground. Workmen are praying for their reinstatement with consequential benefits. They also. prayed for continuation of their service as per circular dated 3-12-02.

4. IInd party filed Written Statement at page 20/1 to 20/10. IInd party submitted that Ist party employees were employed on daily wages as messengers. The working days of workmen were Raj Kumar Rai- 82 days, S.Babulkar-90 days, S.Mishra-74 days, B.S.Negi- 87 days, V. M. Singh-89 days, R.K.Matai- 89 days, Y. Bhoi-86 days and R.Solanki-85 days in the year 1996. It is reiterated that all workmen were engaged on exigencies as part time messengers. They were free to come to duty on next date. Management was also on liberty to not engage them. That workman had not completed 240 days continuous service. Their discontinuation is covered under Section 2(oo) (bb) of I.D. Act. Ist party workmen are not entitled to retrenchment compensation under Section 25-F of I.D. Act. They are not employees under Section 25(B) of I.D. Act. that as per agreement dated 17-11-87, 16-7-88, 28-10-88 & 9-1-91 between the management of SBI and staff federation, opportunity was to be given to the workmen working during 1-7-75 till 31-7-88 extended to 14-8-91. Ist party employees were considered for permanent appointment. They were interviewed but not found suitable for permanent employment as per their seniority and cut off date. He further submitted that as per ratio held in Case of Umadevi and others versus State of Karnataka in 2006(4) SCC-01, the workmen are not entitled for regularization of their services. The Ist party workmen were never appointed against permanent vacancies. The temporary employees could not be made permanent after expiry of term of appointment. The workmen were given opportunity for absorption on the post of permanent messengers. They were found not eligible in the interview. Therefore workmen are not entitled for reinstatement. It is further submitted that workmen were not selected for permanent appointment. The representations of Ist party workmen were considered and decision was communicated to them. Violation of Article 14, 16, 21 of the constitution is denied.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :—

(i)	Whether the action of the management of Asstt. General Manager, State Bank of India, Zonal Office, Bhopal in terminating the services of the workmen (as listed in Annexure I against their date of termination) is justified?	In Affirmative except in case of workman Shri Raj Kumar Rai.
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Terms of reference clearly spells to the legality of termination of services of Ist party workmen. Terms of reference are silent about the regularization in service of the Ist party workmen. Ist party workmen have pleaded that they were called for interview for permanent post of

messenger in 1989, they were not communicated about their unsuitability for the said post. They were under impression that they would be appointed. Despite of representations, they did not receive the appointment orders. Identical affidavit of evidence are filed by Shri Sanjay Babulkar, Santosh Mishra, Yashwant Bhoi, Vinod Mangal Singh, Raj Kumar Matai, Raju Solanki, Raj Kumar Rai and Bhopal Singh Negi. Except Shri Bhopal Singh Negi, all of them were cross-examined. Negi died during pendency of reference proceeding and he could not be cross-examined. In all affidavit of evidence, workmen have stated that they were working on vacant post of messenger. The post was sanctioned. That they were fulfilling the conditions they were working in establishment of respondent Bank. IInd party during preceding 4 years. That they were called for employment on post of messengers as per selected list prepared after interview. It was followed by staff circular which confirmed that the select list prepared on the basis of interview held was kept alive. They were getting the pay scale plus DA with all other financial benefits including medical reimbursement and bonus. They claims to have been selected after interview. The post was advertised. Management had given employment to fresh candidates.

7. Shri Sanjay Babulkar in his cross-examination says that he has no knowledge about settlement between Union and management. He denies that he had given interview as per the settlement. He claims that he was interviewed as per the advertisement. That after his interview, his name was at Sl. No. 177 of the Waiting List. He also claims that junior persons were appointed by the management. Shri Santosh Mishra in his cross-examination says that prior to 14-8-91, he had worked only for 74 days. He was interviewed as per Bipartite Settlement. His name was at Sl. No. 376 of the Waiting List. He claims ignorance of the date of appointment of Lal Bahadur, Thapa Anil Kumar, Kanchedilal, Babulal Sharma. He admits that prior to his interview he had completed 240 days continuous service. Shri Yashwant Bhoi in his cross-examination says that previously he was working as canteen boy. In the year 1986, he worked as messenger, he was interviewed as per the settlement. Prior to his interview, he worked for 86 days. The certificate of 86 days working was issued. His name was at S1. No. 20 of the waiting list. Shri Vinod Mangal in his cross-examination claims ignorance about settlement between Union and management. He denies that he was interviewed as per the settlement. That he was at S1.No. 160 in the waiting list. He did not recollect who is appointed in the waiting list below his number but those persons were appointed in 1997. Raj Kumar Matai in his cross-examination says prior to 14-8-91, he was working as canteen boy. He was called for interview as per settlement between Bank and Union. Prior to 14-8-91, he worked for 89 days. His number was 186 in the "C" category of waiting list. He did not remember what was date of appointment of Babulal, Thapa Anil Kumar, Kanchedilal and Lal Bahadur. Evidence in cross-examination of Raju Solanki is also similar to cross-examination of other witnesses. Advertisement was given in 1991 for post of messenger. Earlier he had worked for 89 days in Badkheda branch of the Bank. As he received information about the availability in said branch, he had gone there. His no. was 228 in the Waiting List. He worked for 89 days prior to his interview. Raj Kumar Rai in his cross-examination says that he had worked for 82 days prior to his interview. His name was at Sl.No. 267 of the Waiting List. He was called for interview for the post of messenger after advertisement was published. Gopal Singh Negi was not available for his cross-examination.

8. Documents Exhibit W-l shows that Sanjay Kumar had worked for 90 days during 1-10-82 to 3-9-83. Exhibit W-2 shows that Bhopal Singh worked for 87 days during 13-3-85 to 16-6-85. Exhibit W-3 shows that Yashwant Bhoi worked for 86 days during 8-1-87 to 5-6-87. Exhibit W-4 shows that Raj Kumar Rai worked for 82 days in 1984 in the Bank. Exhibit W-5 shows that Shri Raj Kumar Matai worked for 89 days from June 83 to August 83. Exhibit W-6 shows that Vinod Mangal Singh was called for interview for temporary appointment. Exhibit W -8 is copy of circular dated 9-9-92. Said document shows that for appointment in the Bank, norms should be prescribed. Exhibit W-9 is letter dated 27-1-94 by Asstt. General Manager. The letter shows that there are no directions for how many days candidates in waiting list should be appointed. That document Exhibit W-10 is order passed by Hon'ble High Court in 2404/2000. The directions were given by Hon'ble High court that petitioner shall give period of service including the names of branches and certificate/proof in support of their claim, petitioners shall furnish the date of their application for empanelment, petitions whose date of birth is under dispute may also furnish documents in support of their date of birth, petitioners may also furnish the name of those persons who according to them have worked for less number of days etc... In present case, the evidence of workmen shows that they did not worked for more than 240 days. The documents also shows that they had worked about 82 to 90 days during the period from 82 to 85. The document Exhibit W -12 shows that Shri Raj Kumar Rai had worked for 82 days in 1984 in Regional Branch Bhopal. He worked for 1208 days during the period from 93 to 97, he also worked for 898 days during 1-4-97 to 17-9-99. The working for subsequent period i.e. 1993 to 1997 and 1-4-97 to 17-9-99 was not considered.

9. Above document clearly shows that Shri Raj Kumar Rai had worked more than 240 days since 1993 to 1997. His services are terminated without notice.

10. The evidence of management's witness Shri M.K. Kaushik is on the point that any of the workmen had not

completed 240 days continuous service. they were all engaged as per exigencies as par time messenger. All workmen were called for interview as per settlement but workmen were not found eligible as per the prescribed criteria. In his cross-examination, management's witness says he did not know the period and time of discontinuation of the services. He claims ignorance whether the employees were again re-employed. That those employees were paid back wages. He claims ignorance whether salary of employees were paid from Establishment Accounts. The witness was referred reply dated 23-1-07 but the witness claimed ignorance about its contents.

11. Management is admitting that candidates were interviewed and it is admitted that workmen were not found suitable. In documents about selection of candidates after interview is not produced on record. However as discussed above, the point of regularization is not included in terms of reference. The reference is related to the legality of termination of services of workmen. The copies of settlement are produced by IInd party but the same are demed by counsel for 1st party. The evidence discuss.ed above sh.ows that as per document Exhibit W-12 workman Raj Kumar Rat had completed 240 days continuous service prior to his termination, his services are terminated without notice in violation of Section 25-F of I.D. Act.

12. Learned counsel for management Shri Tripathi relies on ratio held in

> "Case of Krisihna Bhagya Jala Nigam Limited versus Mohammed Rafi reported in 2009(11) Supreme Court Cases-522. The ratio held by their Lordship is burden of proof as to completion of 240 days of continuous work in a year lies on aggrieved workman.

13. Learned counsel for workmen Shri Ashok Srivastava on the point relies on ratio held in

> "Case of Shri Sanjay Kumar versus Chief Executive Officer, Janpad Panchayat, Ratlam reported in 2010(3) MPLJ-457. Their Lordship dealing with termination of daily rated employee without giving notice or retrenchment compensation. Evidence produced by the petitioner workman was sufficient to prove that the petitioner has worked for more than 240 days. Burden proof in rebuttal there is no cogent evidence adduced by the respondent. Burden of proof shifts on the respondent employer to prove that petitioner did not complete 240 days of service in the requisite period to constitute continuous service."

> In present case only from Document Exhibit W -12 working days of Shri Raj Kumar Rai are found more than 240 days. Management had not produced any record about working days of other employees. No evidence in rebuttal is produced by management but evidence of workman is also not cogent that they have completed more than 240 days. As per document Exhibit W -1 to W -6, all those employees have worked only between 80-90 days. Therefore termination of their service cannot be said in violation of Section 25-F of I.D. Act. considering the evidence on record, I donot find substance to discuss ratio in detail the ratio held in ILR(2012) M.P.378 or 2013-LAB. I.C.3329. 2008-M.P.L.S.R.180 is judgment by the Honble High Court but it appears the judgment by Industrial Tribunal, Indore. It cannot be treated as binding president.

14. For above reasons, I record my finding in Point No.1 that the action of the management of Asstt. General Manager, State Bank of India Zonal Office, Bhopal m termmatmg the services of the workmen except Shri Raj Kumar Rai is found in violation of Section 25-F of I.D. Act. The termination of services of all other workmen is found proper and legal. Question arises to what relief, the workman Shri Raj Kumar Rai is entitled.

15. As per evidence of Shri Raj Kumar Rai, he was working for 4 years preceding termination of his services. Considering he was called for interview but no evidence produced whether he was selected, the copy of Waiting List is not produced, workman cannot be allowed reinstatement with back wages. Reasonable compensation would be appropriate relief. Considering length of service of 4 years preceding his termination, compensation Rs. 1 Lakh would be appropriate and reasonable. Accordingly I record my finding in Point No. 2.

16. In the result, award is passed as under :—

(l) The action of the management of Asstt. General Manager, State Bank of India, Zonal Office, Bhopal in terminating the services of the workmen except Shri Raj Kumar Rai is legal and proper.

(2) The action of the management terminating workman Shri Raj Kumar Rai is violative of Section 2S-F of I.D. Act.

(3) IInd party management is directed to pay compensation Rs. 1 Lakh to workman Shri Raj Kumar Rai. Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

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